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10	Nos.	1	600
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1 JUDGE BRODSKY: Let's go on the record and now
2 call case 04-0610. This is New Landing Utility,
3 Inc. It's the rate case day two of the trial, if I
4 may have appearances for the record, please.

5 MR. GARG: Representing the People of the State
6 of Illinois, Rishi Garg and Susan Satter from the
7 Office of Attorney General, Lisa Madigan, 100 West
8 Randolph, Floor 11, Chicago, Illinois, 60601.

9 MR. LOWE: Ralph Lowe representing the Lost
10 Nation Property Owners Association, 407 West Galena
11 Boulevard, Aurora, Illinois.

12 MS. MURAN-FELTON: Amy Muran-Felton on behalf of
13 New Landing Utility, 110 South New Lake, Oak Park,
14 Illinois, 60302.

15 MS. SCARSELLA: Carla Scarsella and Jan
16 Von Qualen appearing on behalf of the Staff of the
17 Illinois Commerce Commission, 160 North LaSalle
18 Street, Suite C-800, Chicago, Illinois, 60601.

19 JUDGE BRODSKY: Okay. Thank you. Welcome back,
20 everyone, for day two. Just as we begin,
21 unfortunately one of the challenges in this room
22 today is that we have no microphones, so I'm going

1 to ask everyone to speak up so that the sound
2 doesn't get lost.

3 With that, is staff ready to proceed
4 with its first witness today?

5 MS. SCARSELLA: Yes, we are. Staff would like to
6 call witness Rochelle Phipps.

7 (Witness sworn.)

8 ROCHELLE PHIPPS,
9 called as a witness herein, having been first duly
10 sworn, was examined, and testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MS. SCARSELLA:

14 Q. Ms. Phipps, would you please state your full
15 name for the record.

16 A. My name is Rochelle, R-o-c-h-e-l-l-e,
17 Phipps, P-h-i-p-p-s.

18 Q. Whose your employer and what is your
19 business address?

20 A. I'm employed by the Illinois Commerce
21 Commission, 527 East Capitol Avenue, Springfield,
22 Illinois, 62701.

1 Q. What is your position at the Illinois
2 Commerce Commission?

3 A. I'm a senior financial analyst in the
4 Finance Department of the Financial Analysis
5 Division.

6 Q. Did you prepare a written -- did you prepare
7 exhibits for submittal in this proceeding?

8 A. Yes, I did.

9 Q. Do you have before you a document which has
10 been marked for identification as ICC Staff Exhibit
11 3.0, which consists of 37 pages, including one cover
12 page, a table of contents, 29 typewritten pages, and
13 6 pages of schedules and is it entitled "The Revised
14 Direct Testimony," which is -- excuse me -- which is
15 entitled the "Direct Testimony of Ms. Phipps?"

16 A. Yes, I do.

17 Q. Did you prepare that document for
18 presentation in this matter?

19 A. Yes, I did.

20 MS. SCARSELLA: I would like to note for the
21 record that this is the same document that was filed
22 via e-Docket on January 21, 2005.

1 MS. SCARSELLA: Q. Do you have any additions or
2 corrections to make to ICC Staff Exhibit 3.0?

3 A. No, I do not.

4 Q. Is the information contained in ICC Staff
5 3.0 true and correct to the best of your knowledge?

6 A. Yes, it is.

7 Q. If I were to ask you the same questions set
8 forth in ICC Staff Exhibit 3.0, would your responses
9 be the same today?

10 A. Yes, they would.

11 MS. SCARSELLA: Your Honor, I move for admission
12 into evidence of ICC Staff 3.0.

13 JUDGE BRODSKY: Any objections?

14 MS. MURAN-FELTON: None from the company.

15 MR. LOWE: No objection.

16 JUDGE BRODSKY: Okay. Then Exhibit 3.0 is
17 admitted subject to cross-examination.

18 (Whereupon, ICC Staff
19 Exhibit No. 3.0 was
20 received in evidence.)

21 MS. SCARSELLA: Ms. Phipps is available for
22 cross-examination.

1 JUDGE BRODSKY: Okay. Does the company wish to
2 begin?

3 MS. MURAN-FELTON: Yes, I will.

4 CROSS EXAMINATION

5 BY

6 MS. MURAN-FELTON:

7 Q. Good morning, Ms. Phipps.

8 JUDGE BRODSKY: Proceed.

9 MS. MURAN-FELTON: Thank you.

10 MS. MURAN-FELTON: Q. You propose as
11 a reasonable -- what you believe is a reasonable
12 rate of return of 8.38, is that correct?

13 A. That's correct.

14 Q. Schedule 3.1 of your testimony?

15 A. Yes, 8.38 percent.

16 Q. And do you recall seeing the capital
17 structure that was set by the Illinois Commerce
18 Commission for this company in Docket 79-0673 and
19 Docket 79-0679?

20 A. I don't recall what the capital structure
21 was in that case.

22 Q. If I were to show it to you -- this is the

1 order from the Commerce Commission and that's the
2 schedule that sets forth the capital structure for
3 the company in that docket -- in the 1979 docket.

4 (Document tendered.)

5 A. Okay. I see.

6 Q. Isn't it true that in that case and those
7 dockets that the Commerce Commission set the capital
8 structure for the company at \$170,534 of debt and
9 900,000 of equity?

10 A. Well, I don't agree with that. There is
11 900,000 in common equity, however, there is a
12 surplus -- an earned surplus of negative \$155,510
13 (sic), so I believe the common equity balance is
14 actually \$744,490 and I believe that the debt total
15 \$300,000 because there's the mortgage note for
16 \$170,534 and there was also advances from associated
17 companies for \$129,000.

18 Q. What interest is owed on the advances?

19 A. I don't know what the interest rate is on
20 advances from the associated companies. I have
21 requested that information and the company wasn't
22 able to provide that.

1 Q. The order doesn't allow that, does it?

2 A. I don't know if the order allows it.

3 MS. SCARSELLA: Objection; relevance as to how is
4 this pertinent to the rate of capital that
5 Ms. Phipps has computed.

6 MS. MURAN-FELTON: Well, it is relevant because
7 the capital structure in this matter is at issue.

8 JUDGE BRODSKY: I'll allow the question.

9 THE WITNESS: I don't know what the interest rate
10 is on advances from associated companies, but I know
11 that in the December 31, 2003 annual report -- I
12 don't know what the interest rate is on advances for
13 associated companies, but I know that the remaining
14 balance for those advances from associated
15 companies, which is just over \$80,000, is reflected
16 in the long-term debt portion of the company's
17 balance sheet as of December 31, 2003, so I consider
18 that long-term debt.

19 MS. MURAN-FELTON: Q. If there's no interest
20 allowed, how can you calculate that in the overall
21 capital structure?

22 A. Well, ultimately from my cost of capital

1 recommendation, I used a hypothetical capital
2 structure, so it didn't really reflect the advances
3 from associated companies.

4 Q. So if you were to use the order from Docket
5 79-0673 and 79-0679 as a hypothetical capital
6 structure in this case, you could use just the debt
7 of \$170,534 on the equity of 900,000 for a total of
8 \$1,070,594 (sic) of debt equity?

9 A. Will you repeat the question, please.

10 Q. I'm sorry. Using your hypothetical, could
11 you use this as a hypothetical capital structure and
12 using this hypothetical capital structure of
13 \$170,534 of debt and \$900,000 of equity, would your
14 total debt in equity be \$1,070,594?

15 A. Hypothetically speaking, if I used a
16 \$900,000 common equity balance and \$170,534
17 long-term debt balance, I would have an 84 percent
18 equity ratio.

19 Q. If the ratio does change, the overall rate
20 of return would change? If for some reason the
21 ratio that you calculated in your testimony changed,
22 the overall rate of return will change?

1 A. All else equal that their capital structure
2 ratios changed, therefore, the cost of capital will
3 change.

4 Q. And you used a hypothetical capital
5 structure --

6 A. Yes.

7 Q. -- in your testimony? Okay.

8 MS. MURAN-FELTON: Thank you. I don't have any
9 other questions.

10 JUDGE BRODSKY: The intervenors --

11 MS. SATTER: Yes.

12 JUDGE BRODSKY: -- do you have any questions?

13 MR. LOWE: No questions.

14 MS. SATTER: Okay. Thank you.

15 CROSS EXAMINATION

16 BY

17 MS. SATTER:

18 Q. Good morning.

19 A. Good morning.

20 Q. My name is Susan Satter. I'm with the
21 Office of the Attorney General. I have just a
22 couple of questions for you about your testimony.

1 JUDGE BRODSKY: You know, I think both of you are
2 going to have to speak a little louder. This room
3 really swallows.

4 MS. SATTER: Q. You determined the return on
5 common equity that you believed is appropriate for
6 New Landing Utility; is that correct?

7 A. Yes, I did.

8 Q. And to determine the return on equity, you
9 analyzed certain publicly-traded companies; is that
10 correct?

11 A. That's correct.

12 Q. And you had two samples, a water sample and
13 a general utility sample, correct?

14 A. That's correct.

15 Q. And did both of those samples meet -- excuse
16 me. The water sample met two criteria you said in
17 your testimony and you have a sample of six
18 companies.

19 Were those all the companies that met
20 your two criteria or did you take some that met your
21 criteria?

22 A. The six companies composing my water sample

1 are all the companies that met the two criteria I
2 used to estimate New Landing's cost of capital --
3 the two scenarios I used to select my water sample.

4 Q. So that was the universe that you had
5 available to you?

6 A. That's correct.

7 Q. Okay. So you did not consider the size of
8 the company making up these publicly-traded
9 corporations in selecting your sample?

10 A. Just to select my sample, I did not consider
11 the size of these companies, but in es- -- or making
12 a recommendation as to New Landing's cost of
13 capital, I considered New Landing's size relative to
14 the size of these companies.

15 Q. So you did look at size of these companies
16 at some point in your analysis?

17 A. I didn't look at their size, specifically
18 the market capitalization, large market-traded
19 companies.

20 Q. Did you look at their operations, in other
21 words, Aqua America, Inc., do you know what their
22 operations consists of?

1 A. Well, Aqua America is primarily a water
2 utility. That was one of my criteria. My first
3 criteria was that I began with a list of all
4 domestic public corporations assigned to industry
5 number 4941 (sic), so primarily water companies.

6 Q. So we know that these are water companies?

7 A. That's correct.

8 Q. Okay. Now are you -- do you agree with me
9 that large public -- some large publicly-traded
10 water companies consist of several smaller water
11 utilities that are managed by a parent? Are you
12 aware of that kind of structure?

13 A. Yes, I am. For example, Aqua America is the
14 parent company of several other water operating
15 companies.

16 Q. Okay. And within their companies, do you
17 know how many are serving smaller communities?

18 A. No, I don't know that.

19 Q. Would you know that for Artisan Resources,
20 in other words, what portion of their operations
21 serve small communities?

22 A. No, I don't know that.

1 Q. And California Water Service Group same
2 answer?

3 A. I don't know.

4 Q. Would it be fair to say you don't know that
5 for any of the water companies in your sample?

6 A. It's fair to say I did not consider the
7 operating utilities. I considered the six companies
8 when estimating the cost of capital.

9 JUDGE BRODSKY: Could you continue to project.

10 THE WITNESS: Sure.

11 MS. SATTER: Q. So you don't know to what
12 extent these companies have small water company
13 operations within them?

14 A. No, I don't know the details of all the
15 operating companies. I relied on market data for
16 these six water utilities.

17 Q. And that was not in the market data?

18 A. Not that I relied upon for my analysis.

19 Q. Now you relied on the DCF and CAP M methods
20 to determine the cost of common equity for your
21 sample group?

22 A. Yes, I did.

1 Q. And is it your belief that these two
2 analysis are well-established measures?

3 A. Yes, they are.

4 Q. And is it true that the Commerce Commission
5 has used these measures consistently for sometime?

6 A. As long as I've been at the Illinois
7 Commerce Commission, I have used the DCF and risk
8 premium model I believe.

9 Q. Now in looking at these publicly-held
10 companies, would you agree with me that the
11 management is separate from the owner, that is the
12 management is separate from the shareholders?

13 A. Yes, that's true. These are publicly-traded
14 companies, so the shareholders are public and they
15 all manage their water utility operations.

16 Q. Would you agree with me that management is
17 held to a standard to at least produce a return on
18 invested capital when a company is publicly-traded?

19 MS. MURAN-FELTON: I would object on the
20 expertise she would have in this area.

21 MS. SATTER: Well, her expertise is return on
22 capital and structure of corporations.

1 JUDGE BRODSKY: I'll allow the question.

2 MS. MURAN-FELTON: But not on management.

3 THE WITNESS: I know that investors demand a
4 return that is commiserate with the level of risk
5 with the company.

6 MS. SATTER: Q. If a -- if management were
7 producing a negative return, do you think their
8 shareholders would demand changes in the management?

9 MS. MURAN-FELTON: I object on the grounds of she
10 would be speculating as to what they would know.

11 JUDGE BRODSKY: Overruled. You may answer the
12 question.

13 THE WITNESS: I would agree with that because the
14 reason I use the hypothetical capital structure for
15 New Landing in part is a negative rate of return
16 requirement.

17 JUDGE BRODSKY: I'm sorry?

18 THE WITNESS: A negative rate of return
19 requirement doesn't make any sense from a financial
20 standpoint.

21 MS. SATTER: Q. So in theory, the corporate
22 structure is setup so that shareholders discipline

1 management and demand certain performance from
2 management; is that correct?

3 A. I would agree that companies are accountable
4 to their public shareholders.

5 Q. Thank you.

6 Now you would agree with me that New
7 Landing Utility is not publicly-traded?

8 A. That's true.

9 Q. And in that -- in New Landing -- in New
10 Landing Utility's situation, management and
11 ownership are the same; is that correct? Are you
12 aware of that?

13 A. That's my understanding, yes.

14 Q. And under those circumstances, would you
15 agree with me that management and -- that management
16 and ownership are more closely linked? Strike that.
17 That wasn't the question.

18 Would you agree with me that if
19 management and ownership are the same the owners
20 have the opportunity to control management?

21 A. I would agree with that. They're the same
22 person.

1 Q. So to the extent that -- that the owners
2 control management directly, the risk of
3 mismanagement should be minimized, wouldn't you
4 agree, at least from the point of view of the
5 shareholder?

6 A. You are asking if the -- is it correct
7 that -- you are asking that if the owner is the
8 shareholder, then the owner would want to minimize
9 risk of mismanagement? I'm not sure I understand.

10 MS. MURAN-FELTON: I object only because I think
11 it's getting beyond her expertise.

12 MS. SATTER: Well, she can't answered the
13 question, so I have to rephrase the question.

14 JUDGE BRODSKY: Right.

15 MS. MURAN-FELTON: Okay.

16 JUDGE BRODSKY: Go ahead. Rephrase the question.

17 MS. SATTER: Q. Would you agree with me that if
18 the owner -- if the owner of all the shares is the
19 same as the management that the risk to the
20 shareholder is minimized because the shareholder can
21 totally control management?

22 MS. MURAN-FELTON: I would just object because

1 again because she's a financial expert, not a
2 corporate governance expert.

3 MS. SATTER: This goes to risk.

4 JUDGE BRODSKY: Sustain as to form. If it's a
5 purely hypothetical question, I'll allow it, then
6 ask the question as such.

7 MS. SATTER: Q. In theory, can you answer that
8 question?

9 A. I can't really speak to that question. What
10 I'm trying to do when I'm making my cost of capital
11 recommendation is balance the interest of the
12 utility and the ratepayers, and as far as the level
13 of risk, depending upon who the shareholders, I
14 can't speak to that. I don't know.

15 Q. When you say you're balancing the interests
16 of the utility and the ratepayers, you mean the
17 utility shareholders and the ratepayers?

18 A. I would say the utility, because what I'm
19 trying to do is produce a rate of return that result
20 in revenue requirements that allow the utility to
21 access the capital markets, so I would say the
22 utility.

1 Q. Okay. So not the ratepayers, so you are not
2 that concerned with the shareholder return?

3 A. Well, as long as the cost of capital that I
4 recommend is equal to the investor required rate of
5 return and shareholder return would be satisfied and
6 be met.

7 Q. Now you determined based on DCF and CAP M
8 that the investor required return for a water
9 utility is I believe 9.9 percent.

10 A. Will you repeat the question, please.

11 Q. Based on --

12 MS. MURAN-FELTON: What page were you referencing
13 in Ms. Phipps' testimony?

14 MS. SATTER: Q. On Page 21, Line 397, you say
15 taking the midpoint of the DCF and risk premium
16 derived estimates, and that's your CAP M analysis --

17 A. Yes.

18 Q. -- or 9.90, so my question to you is based
19 on your DCF and your risk premium derived estimates,
20 would the midpoint be 9.90?

21 A. That's correct.

22 Q. And you used the midpoint of those two

1 analyses as a starting point in your other analyses
2 that you have done before the Illinois Commerce
3 Commission?

4 A. Well, I don't always use the midpoint. It
5 depends on the target company, the company for which
6 I'm estimating the cost of capital for.

7 Q. So you like to retain some judgment in this?

8 A. That's true.

9 Q. But if you were to take average of your DCF
10 and your CAP M analysis, you would have gotten 9.9;
11 is that correct?

12 A. That's correct.

13 Q. And if, in fact, you used 9.9 as a base to
14 then adjust on the basis of your informed judgment;
15 is that correct?

16 A. That's correct.

17 Q. So had you not made any further adjustment,
18 9.9 would have been your DCF and CAP M result?

19 A. That's correct.

20 Q. Okay. Now you added what you called a
21 liquidity premium, correct?

22 A. That's correct.

1 Q. And the effect of that was to increase the
2 return on common equity by 246 basis points,
3 correct?

4 A. That is correct.

5 Q. And you used an interest rate that you found
6 at the Rural Telephone Finance Cooperative for a
7 10-year loan as a basis for that adjustment,
8 correct?

9 A. Well, to estimate liquidity premium, I
10 subtracted the current rate of return on a 10-year
11 A-rated corporate utility bonds from the interest
12 rate the Rural Telephone Finance Cooperative charges
13 for 10-year loans.

14 Q. Was there any attempt to modify your risk
15 premium -- your risk premium analysis since you
16 were using interest rates for bonds and 10-year
17 loans?

18 A. No, that was an adjustment for my cost of
19 equity.

20 Q. But you used long-term interest rates for
21 bonds for your cost of equity?

22 A. That's true.

1 Q. So you didn't use a market-based -- a
2 shareholder market-based figure, did you?

3 A. I don't know how I could estimate an
4 liquidity premium using data for market-traded
5 companies because the liquidity premium is intended
6 to compensate investors for the additional risk that
7 exist when a company's not market traded.

8 Q. So you are assuming that there is an
9 additional risk as a result of not being traded?

10 A. Yes. As I stated on Line 405 of my direct
11 testimony, liquidity cost arise from the property of
12 financial consequences of an investor's ability to
13 set an asset at the desired time an individual
14 price.

15 Q. Now you didn't balance against that risk the
16 increased control that an investor that wholly owns
17 a company would have, didn't you?

18 A. No, I didn't.

19 Q. Now you used the Rural Telephone Finance
20 Cooperative's rate, correct?

21 A. Yes.

22 Q. Now the Rural Telephone Finance Cooperative

1 provides funding to rural telephone cooperatives;
2 isn't that correct?

3 A. Yes, that's correct.

4 Q. It does not provide financing to
5 investor-owned companies; isn't that correct?

6 A. The Rural Telephone Finance Cooperative is
7 not limited to telephone cooperatives and also
8 provides links to rural community telephone
9 companies.

10 Q. Do you know whether those commercial
11 telephone companies are investor-owned? Are you
12 assuming when I say commercial it means investor
13 owned?

14 A. I don't know if they're in -- these
15 telephone companies that RTFC provides -- RTFC --
16 excuse me -- provides lending to companies that
17 would also not have liquid securities and they may
18 have a small group of investors, but there's no
19 publicly-traded companies like the companies in my
20 sample.

21 Q. But they include customer-owned companies
22 which are what cooperatives are, correct?

1 A. Yes.

2 Q. Did you look at what lending -- excuse me.

3 Let me strike. Did you look at what loans are

4 available to water cooperatives or small

5 non-for-profit water utilities?

6 A. No, I didn't.

7 Q. Are you familiar with the United States

8 Department of Agriculture's rural utility service?

9 A. I'm not familiar with that.

10 Q. Are you familiar with their water and waste

11 water interest rate program?

12 A. No, I'm not.

13 Q. So you did not consider particular -- you

14 didn't consider programs particular to water

15 utilities in developing your liquidity analysis, did

16 you?

17 A. No, I used the RTFC interest rate because I

18 have access to that.

19 Q. Now you would agree with me that the

20 different phone industries and the water industries

21 serve different functions?

22 A. I would agree with that.

1 Q. And in the telephone industry would you
2 agree with me that there have been significant
3 efforts to introduce competition to that industry?

4 A. I would agree with that.

5 Q. And would you agree that there has been,
6 some would say, a technological acceleration in the
7 telephone industry over the past say ten years?

8 A. I would agree with that.

9 Q. And would you agree with me that among the
10 changes in the telephone industry is the demand for
11 broadband services which could -- stop there -- the
12 demand for broadband services?

13 A. I'm not a telecommunications expert, but the
14 telecommunications industry has I would -- the
15 telecommunications industry has different risk than
16 the water utility industry, but if I was estimating
17 the cost of capital for a telecommunications
18 company, I would use a sample of telecommunications
19 companies as opposed to a water utility sample.

20 Q. Okay. So you wouldn't use the same sample
21 for telephone as for water ordinarily?

22 A. No.

1 Q. Are you familiar with intercarrier
2 compensation?

3 A. No.

4 Q. Do you know what risk that issue has imposed
5 on telephone companies, particularly rural telephone
6 companies?

7 A. I'm not an expert in telecommunications.

8 Q. So you don't know what the effect of the
9 intercarrier compensation of rural revisions are?

10 A. No.

11 Q. And so you don't know what effect that might
12 have on cost of capital, do you?

13 MS. SCARSELLA: Objection, your Honor; asked and
14 answered.

15 JUDGE BRODSKY: Sustained.

16 MR. SATTER: I did not ask if she knew what
17 effect it would have on cost of capital.

18 MS. SCARSELLA: She did not consider it. How
19 many times does she need to say that.

20 JUDGE BRODSKY: Well, that's my view is she's
21 already testified that she's not addressing that
22 issue and not an expert in that issue, so let's move

1 on.

2 MS. SATTER: Q. So you don't know what effect
3 this might have had on the interest rate that was
4 used on Page 22 of your testimony?

5 MS. VON QUALEN: Can you clarify what you mean by
6 this?

7 MS. SATTER: All of the items we've just gone
8 over because the testimony's about the telephone
9 industry.

10 THE WITNESS: No. The reason I use the RTFC
11 interest rate because it's the best available proxy
12 for an ill-liquid company interest rate.

13 MS. SATTER: Q. And when you say best, you mean
14 the best even with all these problems and
15 differences that we have just talked about?

16 A. Yes, I believe that that's true. The
17 A-rated corporate utility bonds that I used in
18 addition to the RTFC interest rate is not limited to
19 water utility either, so I think that my liquidity
20 premium is the best available estimate that I have.

21 Q. Your liquidity premium was basically the
22 difference between what the Rural Telephone Finance

1 Cooperative charge for a 10-year loan and the
2 10-year A-rated corporate utility bond?

3 A. That's correct.

4 Q. So if you had used a different proxy for a
5 small utility, you might have gotten a different
6 result?

7 A. That's certainly possible, but this
8 liquidity premium reflects the perceive reward for
9 security that does not have a liquid market. The
10 10-year A-rated corporate utility bonds are traded
11 freely. There's a liquid market for there's the
12 RTFC interest rates are limited to companies that
13 don't have access to the public market for issuing
14 bonds so I anticipate have been different, but I
15 believe this is a good estimate for liquidity cost.

16 Q. But wouldn't you agree with me that a
17 similar charge for a rural water sample would be
18 better?

19 A. I don't know that.

20 Q. How about a sample for the market as a whole
21 that address small companies?

22 A. I don't know that either.

1 Q. Because you don't really know to what effect
2 the state of the telephone industry has affected
3 this 7.35 percent interest rate?

4 A. No, I don't know that because the liquidity
5 costs are not directly observable if I use a proxy
6 for it. If I use a proxy, there's potential for
7 measurement error. That's why I use samples in two
8 cost-of-equity markets to reduce the amount of that
9 measurement.

10 Q. But you don't know?

11 A. That's the reason I don't know. It's not
12 measured directly -- directly measureable.

13 Q. And you don't know what the measurement of
14 error is, do you?

15 A. No, but I did everything to reduce the
16 amount of measurement. I employed two samples. I
17 employed two different cost-of-equity models and I
18 compared my cost of equity to the rate of return the
19 market currently requires on A-rated long-term debt.
20 I used the best available information.

21 Q. And when you say you used the best available
22 information, you mean in your DCF analysis and your

1 CAP M analysis as well, right?

2 A. In my -- throughout my analysis.

3 Q. Of course, you believe you did the best you
4 could, right?

5 A. Yes.

6 Q. Of course. But when you say that, you are
7 including all of these different elements to it in
8 making your final decision or final recommendation?

9 A. Yes.

10 MS. SATTER: Okay. I have no further questions.
11 Thank you very much for your time.

12 JUDGE BRODSKY: Is there anything, Mr. Lowe?

13 MR. LOWE: No questions.

14 JUDGE BRODSKY: Redirect?

15 MS. VON QUALEN: Could we have a little break
16 first.

17 JUDGE BRODSKY: We'll take ten minutes.

18 (Whereupon, a 10-minute
19 break was taken.)

20 We'll go back on the record. And does
21 staff was any redirect for Ms. Phipps?

22 MS. SCARSELLA: No, we do not.

1 JUDGE BRODSKY: Thank you, Ms. Phipps.
2 You can then call your next witness.
3 MS. VON QUALEN: Staff calls Cheri Harden.
4 JUDGE BRODSKY: We'll put the witness here.
5 Good morning.
6 MS. HARDEN: Good morning.
7 (Witness sworn.)
8 JUDGE BRODSKY: Thank you.
9 CHERI HARDEN,
10 called as a witness herein, having been first duly
11 sworn, was examined and testified as follows:
12 DIRECT EXAMINATION
13 BY
14 MS. VON QUALEN:
15 Q. Good morning, Ms. Harden (sic).
16 A. Good morning.
17 Q. Please state your name for the record.
18 A. Cheri Harden.
19 Q. Who is your employer and what is your
20 business address?
21 A. I'm employed by the Illinois Commerce
22 Commission. My address is 527 East Capitol Avenue,

1 Springfield, Illinois, 62701.

2 Q. What is your position at the Commission?

3 A. I'm a rate analyst in the Rate Department of
4 the Financial Analysis Division.

5 Q. Ms. Harden, did you prepare testimony and
6 exhibits for submittal in this proceeding?

7 A. Yes, I did.

8 Q. And do you have before you a document which
9 has been marked for identification as ICC Staff
10 Exhibit 4.0-R Revised Direct Testimony of Cheri L.
11 Harden consisting of 21 typewritten pages and with
12 one schedule attachment?

13 A. Yes.

14 Q. Did you prepare that document for submittal
15 in this proceeding?

16 A. Yes, I did.

17 Q. Do you have any changes to make to that
18 document?

19 A. No, I do not.

20 Q. And do you also have before you a document
21 which has been marked as ICC Staff Exhibit 8.0,
22 Supplemental Direct Testimony of Cheri L. Harden

1 consisting of two typewritten pages and one
2 schedule?

3 A. Yes.

4 Q. Do you have -- did you prepare that exhibit
5 for submittal in this proceeding?

6 A. Yes, I did.

7 Q. Do you have any additions or changes to ICC
8 Staff Exhibit 8.0?

9 A. No, I do not.

10 Q. And, finally, do you also have before you a
11 document which has been marked as ICC Staff Exhibit
12 12.0 Second Supplemental Direct Testimony of Cheri
13 L. Harden consisting of three typewritten pages and
14 two schedules?

15 A. Yes.

16 Q. Did you prepare ICC Staff Exhibit 12.0 for
17 supplemental in this proceeding?

18 A. Yes, I did.

19 Q. Is the testimony that you provided in ICC
20 Staff Exhibit 4.0-R, 8.0, and 12.0 true and correct
21 to the best of your knowledge?

22 A. Yes, it is.

1 Q. If I were to ask you the same questions
2 today, would your answers be the same?

3 A. Yes, they would.

4 MS. VON QUALEN: Judge, at this time I move for
5 admission into evidence of ICC Staff Exhibit 4.0-R,
6 which was filed electronically on February 14, 2005,
7 ICC Staff Exhibit 8.0, which was filed
8 electronically on March 8, 2005, and ICC Staff
9 Exhibit 12.5, which was filed electronically on
10 March 3, 2005.

11 JUDGE BRODSKY: Is there any objection?

12 MS. MURAN-FELTON: No objection.

13 MR. LOWE: No objection.

14 JUDGE BRODSKY: Okay. Then those exhibits will
15 be admitted subject to cross.

16 (Whereupon, ICC Staff
17 Exhibit Nos. 4.0-R, 8.0,
18 and 12.0 were received
19 in evidence.)

20 Does the company wish to proceed?

21 MS. MURAN-FELTON: Yes.

22

1 CROSS EXAMINATION

2 BY

3 MS. MURAN-FELTON:

4 Q. Hi, Ms. Harden.

5 A. Hi.

6 Q. Just a couple of questions for you.

7 Turning to Page 16 of your testimony,
8 that's ICC Staff Exhibit 4.0R, your initial
9 testimony, you don't -- you disagree with the
10 company request for increase in availability charge;
11 is that correct?

12 A. Yes, I do.

13 Q. And you disagree with the company's request
14 for an increase in available charge because you
15 maintain that the cost to providing this service
16 they, the company, hasn't provided any evidence that
17 the cost of providing this service has increased?

18 A. Yes.

19 Q. Isn't it true that the purpose of recovering
20 the cost of service is -- actually the purpose of
21 the availability charge never to recover the cost of
22 service, rather it was to spread the cost to

1 maintain and improve the plant?

2 A. That may be true in the initial setting of
3 the availability rate.

4 Q. But wouldn't that be true over time? You
5 need to continually maintain and improve the plant;
6 isn't that true over the life of a plant?

7 A. That may be true about the plant, but I
8 don't think that availability costs should continue
9 to cover the cost of that.

10 Q. But you wouldn't disagree with the company's
11 perspective that its purpose was never to just --
12 the purpose of the availability charge was never to
13 just recover the cost of service, rather it was to
14 spread the cost of improving and continually
15 maintaining the plant, would you disagree with that
16 statement?

17 A. Can you state it again.

18 Q. Sure. Can you repeat the question.

19 (Question read by
20 reporter.)

21 A. No.

22 Q. But don't you believe the availability

1 charge customers have the same obligation to upkeep
2 and maintain the plant?

3 A. No.

4 Q. Don't you believe that the availability
5 charge customers enjoy the same benefit of
6 maintaining an updated and improved plant as the
7 other customers?

8 A. No.

9 Q. Would you just disagree with the fact that
10 cost of the upkeep and maintenance of the plant
11 continually increase over time?

12 A. I agree that the cost increases.

13 Q. Ms. Harden, just in the same portion of your
14 direct testimony though Page 6, you propose doing
15 away with the minimum bill and charge for the
16 customer charge and usage; is that correct?

17 A. Yes.

18 Q. How do you propose that this work with
19 respect to the old lines in Lost Nation -- since we
20 can't record their usage because these lines are old
21 and unreliable, do you think that those -- it's
22 workable to do away with those charges when we can't

1 actually rely upon the old lines as far as verifying
2 their usage of those old line meters?

3 A. Well, the customer charge is set at \$10
4 which is the minimum charge received from those
5 customers previous to this case.

6 Q. Wouldn't you disagree with the fact that it
7 is difficult to actually verify usage on those old
8 lines given the fact that these lines are often
9 clogged?

10 A. I believe that some manner to rectify that
11 should be found.

12 Q. So you are proposing that, in essence, the
13 customer's on a -- that might be on the new line is
14 paying for the usage for customers on an old line?

15 A. No.

16 Q. With respect to the customers on the new
17 line, the meter's likely to record the proper usage;
18 is that correct?

19 A. I'm not sure if it's the proper usage. It's
20 the recorded usage.

21 Q. On a line that is constantly clogging the
22 meter, which -- that would not correctly record

1 properly the correct usage, would it?

2 A. I'm not an engineer. I do not know.

3 Q. But if a line is clogged, the meter is not

4 going to record the accurate usage, is it?

5 A. It sounds reasonable. I think then the line

6 should just be cleared and I'm not an engineer to

7 know about how clearing the line.

8 MS. MURAN-FELTON: I don't have anything further.

9 Thanks.

10 THE WITNESS: Thank you.

11 JUDGE BRODSKY: Anything further from any

12 intervenors?

13 MR. GARG: No.

14 MR. LOWE: No questions.

15 JUDGE BRODSKY: Any redirect from staff?

16 MS. VON QUALEN: Staff has no redirect.

17 JUDGE BRODSKY: Thank you, Ms. Harden.

18 THE WITNESS: Thank you.

19 MS. SCARSELLA: Staff calls William Marr next.

20 (Witness sworn.)

21 JUDGE BRODSKY: Thank you.

22

1 WILLIAM D. MARR,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MS. SCARSELLA:

7 Q. Mr. Marr, can you please state your full
8 name for the record.

9 A. My name is William D. Marr spelled M-a-r-r.

10 Q. Who is your employer and what is your
11 business address?

12 A. I'm employed by the Illinois Commerce
13 Commission. My business address is 527 East Capitol
14 Avenue, Springfield, Illinois, 62701.

15 Q. Did you prepare a written exhibit for
16 submittal in this proceeding?

17 A. Yes.

18 Q. Do you have before you a document, which has
19 been marked for identification as ICC Staff Exhibit
20 5.0, which consist of 19 typewritten pages,
21 including one cover page, and 18 typewritten pages
22 and is entitled "Direct Testimony of William D.

1 Marr?"

2 A. That's correct.

3 Q. Did you prepare that document for
4 presentation in this matter?

5 A. Yes.

6 MS. SCARSELLA: I would like to note for the
7 record that this was the same document that was
8 filed via e-Docket on January 21, 2005.

9 MS. SCARSELLA: Q. Do you have any additions or
10 corrections to make to ICC Staff Exhibit 5.0?

11 A. No.

12 Q. You have before you a document which has
13 been marked for identification as ICC Staff Exhibit
14 9.0, which consist of 12 pages, including one cover
15 page, 5 typewritten pages and 6 pages of attachments
16 and is entitled "Supplemental Direct Testimony of
17 William D. Marr."

18 A. Yes.

19 Q. Did you prepare that document for
20 presentation in this matter?

21 A. Yes,

22 MS. SCARSELLA: I would like to note for the

1 record that this is the same document was filed via
2 e-Docket on March 8, 2005.

3 MS. SCARSELLA: Q. Do you have any additions or
4 corrections to make to ICC Staff Exhibit 9.0?

5 A. No.

6 Q. Is the information contained in ICC Staff
7 Exhibit 5.0 and 9.0 true and correct to the best of
8 your knowledge?

9 A. Yes.

10 Q. If I were to ask you the same questions set
11 forth in ICC Staff Exhibits 5.0 and 9.0, would your
12 responses be the same today?

13 A. Yes.

14 MS. SCARSELLA: Your Honor, I move for admission
15 into evidence of ICC Staff Exhibit 5.0 and ICC Staff
16 Exhibit 9.0.

17 JUDGE BRODSKY: Is there any objection?

18 MS. MURAN-FELTON: No objection.

19 MR. LOWE: No objection.

20 JUDGE BRODSKY: Then those exhibits are admitted
21 subject to cross-examination.

22

1 (Whereupon, Staff Exhibit
2 Nos. 5.0 and 9.0 were
3 received in evidence.)

4 Do you wish to proceed.

5 MS. MURAN-FELTON: Yes.

6 CROSS EXAMINATION

7 BY

8 MS. MURAN-FELTON:

9 Q. Good morning, Mr. Marr.

10 A. Good morning.

11 Q. A quick question for you. I think on your
12 initial testimony on Page 9 you recite that
13 83 Illinois Administrative Code 280.90 provides late
14 payment charge shall be set an amount equal to 1 1/2
15 per month on any amount, including amounts
16 previously past due for utility service, which is
17 considered past due under 83 Illinois Administrative
18 Code 280.90.

19 A. Yes.

20 Q. Is that a correct statement?

21 A. Yes.

22 Q. Does, in your opinion, any amounts -- or

1 excuse me. Strike that. Does your opinion for
2 calculation of late charges apply to all amounts
3 that are past due or owed to the utility?

4 A. All amounts that are under tariffs that are
5 approved in their tariffs -- all rates approved in
6 their tariffs.

7 Q. Does that include this amount, this 1 1/2
8 per month --

9 A. Yes.

10 Q. -- under the code?

11 MS. MURAN-FELTON: I don't have anything further.
12 Thank you.

13 MR. GARG: I have nothing.

14 JUDGE BRODSKY: Anything, Mr. Lowe?

15 MR. LOWE: I have a couple of questions.

16 JUDGE BRODSKY: Please proceed.

17 MR. LOWE: Thank you.

18 CROSS EXAMINATION

19 BY

20 MR. LOWE:

21 Q. Mr. Marr, you personally participated in an
22 inspection of the water systems that we're

1 considering and that inspection took place more than
2 one inspection?

3 A. Just one inspection.

4 Q. And what date did that occur?

5 A. May 24, 2004.

6 Q. And, as a result of that inspection, did you
7 or someone on the staff of the Illinois Commerce
8 Commission write to Mr. Armstrong as president of
9 New Landing Utility?

10 A. Yes. We sent him two letters.

11 Q. And what was the date of the first letter?

12 A. June 15, 2004.

13 Q. And a copy of that letter is attached as
14 part of your testimony; is that correct?

15 A. Yes, to ICC Staff Exhibit No. 9.

16 Q. Okay. Was there any response to that letter
17 as far as you know?

18 A. No, the company made no response.

19 Q. And did you or other staff send another
20 letter to Mr. Armstrong as president of the utility?

21 A. Yes, we sent a second letter.

22 Q. What's the date of that letter?

1 A. August 5, 2004.

2 Q. And was there any response to that letter?

3 A. No, the company made no response.

4 JUDGE BRODSKY: I'm sorry. Could you speak a
5 little louder.

6 THE WITNESS: Sorry.

7 JUDGE BRODSKY: Thank you.

8 MR. LOWE: Q. Through and inclusive of the date
9 of the letter, to the best of your knowledge and
10 belief, has the utility ever responded to either of
11 those letters?

12 A. No, they have not.

13 Q. Other than the inspection to which you have
14 testified and which you participated, had you ever
15 participated in any other inspection of the water
16 system owned by New Landing Utility?

17 A. No.

18 Q. No? If you know, how many previous
19 inspections were there by members of the staff of
20 the Illinois Commerce Commission?

21 A. I don't know that.

22 Q. Do you know if there ever were any

1 inspections?

2 A. I know that there is no previous report in
3 our files. I don't know if there's ever been an
4 inspection.

5 Q. If you know, how many customer complaints
6 have the Illinois Commerce Commission received
7 concerning the service provided by New Landing
8 Utility?

9 A. I don't know the exact number, but before we
10 conducted our inspection, I contacted our Consumer
11 Services Division and they gave us a list or I guess
12 identification of what the reasons were for
13 complaints and I know that there was quite a few
14 form letters that were sent in by many of the
15 customers.

16 Q. Form letters you mean they all contain the
17 same language?

18 A. Yes, and then there was also letters that
19 were from individual people that were not form
20 letters, also many of those also.

21 Q. When you use the term "quite a few," could
22 you be more specific in the numbers, say a hundred

1 or less than a hundred, or 50, or more than 10?

2 A. More than 10, less than 50 I actually have
3 copies of. I have 11 letters here from -- this is
4 after the inspection.

5 Q. Those 11 complaints came after the
6 inspection. Do you have any idea how many
7 complaints there were before the inspection?

8 A. No, I don't.

9 Q. There may have been some, but you are not
10 aware?

11 A. Mainly our Consumer Service Division handles
12 complaints.

13 Q. Now as a -- strike that. When the ICC
14 conducts an inspection, such as the one in which you
15 participated and to which you have testified, is the
16 information derived from that inspection shared with
17 any other agency in the State of Illinois,
18 specifically the Illinois Environmental Protection
19 Agency?

20 A. No, our reports aren't shared.

21 Q. And when the Illinois Environmental
22 Protection Agency conducts an investigation and they

1 find there are problems with the water or sewer
2 utility, do they share that information with the
3 Illinois Commerce Commission?

4 A. We do receive copies of the Illinois
5 inspection reports. I don't know if we've received
6 all of them, but we do receive copies of the
7 reports.

8 Q. When you receive the copies of IEPA
9 inspection reports, which show that in their opinion
10 there are problems, what, if anything, does the
11 staff of the Illinois Commerce Commission do?

12 A. Well, in this case we went out and
13 investigated the facilities, and we wrote a letter
14 to them, and we're also aware of the Illinois EPA
15 Attorney General's lawsuit against this company, and
16 we're monitoring the situation to see what the
17 outcome would be.

18 Q. But, as far as you know, the inspection,
19 which you testified, is the first and only one
20 that's ever been conducted by the ICC as far as you
21 know?

22 A. I can't answer that. It's the first one

1 that's been conducted by myself.

2 Q. How long have you been employed by the
3 Illinois Commerce Commission?

4 A. A little over two years.

5 Q. So in the two years that you have been
6 working there, this is the only inspection that you
7 are aware of?

8 A. For New Landing?

9 Q. Right.

10 Q. I'm sorry.

11 MS. VON QUALEN: You have to answer out loud.

12 THE WITNESS: Yes, for New Landing.

13 MR. LOWE: Q. Now, to your knowledge, has the
14 utility done anything to carry out the
15 recommendations contained in your letters?

16 A. The only two that I'm aware of is that he
17 has installed flushing hydrants and sealed the
18 abandoned wells.

19 MR. LOWE: I have no other questions.

20 JUDGE BRODSKY: Redirect.

21 MS. MURAN-FELTON: Your Honor, if I might have
22 two follow-up questions on cross for Mr. Marr.

1 JUDGE BRODSKY: Additional cross?

2 MS. MURAN-FELTON: Yes, I have.

3 MS. SCARSELLA: Objection, your Honor. They had
4 their opportunity at cross.

5 MS. MURAN-FELTON: This was in follow-up related
6 to Mr. Lowe's line of questioning. It's limited
7 only to the two attachments on the inspection.

8 JUDGE BRODSKY: Proceed with redirect.

9 MS. SCARSELLA: Staff has nothing.

10 MS. MURAN-FELTON: Is your ruling --

11 JUDGE BRODSKY: What's that?

12 MS. MURAN-FELTON: This is a ruling that you are
13 not going to allow any further recross?

14 JUDGE BRODSKY: Well, it seems to me that recross
15 would be dependent upon redirect, so you are asking
16 for additional cross?

17 MS. MURAN-FELTON: If I might just because in the
18 record and in addition to the investigation that
19 Mr. Lowe asked Mr. Marr about, he also raised those
20 letters that are not currently in the record and --

21 MS. SCARSELLA: These are in the record. We just
22 added them.

1 JUDGE BRODSKY: Which letters?

2 MS. MURAN-FELTON: There was discussion about
3 regarding the customer letters that we would just
4 like to explore.

5 MS. SCARSELLA: They had an opportunity for
6 cross-examination, your Honor.

7 JUDGE BRODSKY: Wait. Is -- is the customer
8 letters within the direct?

9 MS. SCARSELLA: They were attached to his
10 supplemental direct testimony attachments.

11 MR. ARMSTRONG: Where?

12 MS. SCARSELLA: Oh, the customer letters? I
13 apologize. I misunderstood.

14 MR. ARMSTRONG: We didn't have the chance to
15 explore the customer letters to make an exhibit.

16 MS. SCARSELLA: I misunderstood. I thought it
17 was the water department letters that were being
18 discussed.

19 JUDGE BRODSKY: With respect to the customer
20 letters, is that either attached or discussed within
21 the direct testimony?

22 MS. SCARSELLA: No.

1 JUDGE BRODSKY: All right. If it's not been a
2 matter that they had an opportunity to conduct cross
3 on, then they're going to have to be entitled to ask
4 a question on it, so in that case you may proceed
5 with cross further limited to the customer letters.

6 MS. MURAN-FELTON: Yes.

7 CROSS EXAMINATION (continued)

8 BY

9 MS. MURAN-FELTON:

10 Q. Mr. Marr, with respect to customer letters
11 that you have before you, on those letters are each
12 one of those customers on the old lines?

13 A. I don't believe it specifically spells out
14 what part they live in, not all of them.

15 Q. But their addresses are on the letters?

16 A. Not all of them, just names.

17 Q. What names are on there?

18 MS. MURAN-FELTON: If we could get the names, I
19 request that they, if not already, that they be
20 entered into the record so that the identification
21 of these customers can be noted.

22 JUDGE BRODSKY: Is there a response from staff?

1 MS. VON QUALEN: If you just give us one minute.

2 We're discussing our response.

3 (A brief pause.)

4 This is a surprise to us.

5 MS. SCARSELLA: Staff has no objection to
6 allowing the customer letters into the record.

7 JUDGE BRODSKY: Okay. Let me ask Mr. Lowe, as a
8 representative for the affected homeowners, is there
9 any problem with, from your perspective, as to
10 having the particular customers identified?

11 MR. LOWE: I wouldn't think so. These are
12 letters addressed to a public body. None of them,
13 insofar as I know, are stamped confidential for your
14 eyes only or any such thing, and I think, generally
15 speaking, that if you register a complaint with a
16 government agency, it's a matter of public record.

17 JUDGE BRODSKY: Good enough. So we'll put the
18 letters in. Since there's no objection from staff
19 or otherwise, those should be entered.

20 You are sponsoring that exhibit,
21 Ms. Felton.

22 MS. MURAN-FELTON: Well, I think that the staff

1 should just enter it as one of their cross exhibits
2 to Mr. Marr's testimony.

3 JUDGE BRODSKY: Whose exhibit?

4 MS. MURAN-FELTON: I haven't seen the
5 exhibit --

6 JUDGE BRODSKY: You asked for exhibit --

7 MS. MURAN-FELTON: I ask staff to move to enter
8 it. Excuse me.

9 MS. SCARSELLA: And we had no objection to them
10 entering an exhibit. They're asking us to submit a
11 cross exhibit of our own witness.

12 JUDGE BRODSKY: Which is why I'm confused.

13 MS. SCARSELLA: Which is also I.

14 JUDGE BRODSKY: It sounds to me like they don't
15 object to it being entered. They're not going to
16 enter it themselves, so --

17 MR. ARMSTRONG: Could we go off the record.

18 JUDGE BRODSKY: It's really a matter of labeling.

19 MR. ARMSTRONG: Could we go off the record.

20 JUDGE BRODSKY: We'll go off the record.

21 (Off the record.)

22 Let's go on the record.

1 Let's stay off.

2 (Off the record.)

3 We'll go on the record. Okay. So
4 let's see. There's going to be a stipulation
5 presented, so who wants to present it?

6 MR. ARMSTRONG: After having --

7 MS. MURAN-FELTON: After having discussing that
8 and examining the letter that Mr. Marr had testified
9 about, the complaint letters that were issued to the
10 Commerce Commission, we have discussed this matter
11 with the intervenors, specifically Mr. Lowe, and as
12 counsel for them and the homeowner's association,
13 and we have agreed to stipulate that the letters
14 indicate that all of the residents who drafted those
15 letters live or have property in Lost Nation; is
16 that correct?

17 MR. LOWE: That's correct. We so stipulate.

18 JUDGE BRODSKY: Okay. And so with that
19 stipulation, then do you no longer have questions
20 for Mr. Marr; is that correct?

21 MS. MURAN-FELTON: We have no more questions for
22 Mr. Marr. Thank you.

1 JUDGE BRODSKY: Okay. All right. So we'll
2 accept that for the record.

3 Is there any further discussion on that
4 item?

5 MS. VON QUALEN: Staff does have some redirect
6 for Mr. Marr.

7 JUDGE BRODSKY: Okay. Okay. Please proceed.

8 REDIRECT EXAMINATION

9 BY

10 MS. SCARSELLA:

11 Q. Mr. Marr, the subject -- the company
12 intervenors just stipulated to letters or complaints
13 received from homeowners. Are these the only
14 letters or complaints that you are aware of?

15 A. No, there are others.

16 MS. MURAN-FELTON: I would object on what the
17 relevancy of other letters that are not before us
18 right now.

19 MS. SCARSELLA: I'm just clarifying a point
20 Mr. Lowe raised that there were complaints received,
21 and Mr. Marr already testified that --

22 MS. MURAN-FELTON: Just as long as this is on the

1 record that these hearings aren't before us and not
2 in consideration.

3 MS. SCARSELLA: I'll just ask whether he's aware
4 the complaints received by the Commission.

5 JUDGE BRODSKY: Now if I remember correctly from
6 Mr. Lowe's examination, Mr. Marr had indicated that
7 there may or may not be complaints but the ones that
8 were -- that he was aware of were reflected in the
9 hearings that he had in front of him.

10 MS. SCARSELLA: That's exactly why we like to
11 clarify what he is aware of. We don't --

12 MS. VON QUALEN: Mr. Marr previously testified
13 about a number of form complaint letters and a
14 number of written complaint letters when Mr. Lowe
15 was cross-examining him.

16 Staff would like to clarify what letters
17 are being discussed right now and whether those are
18 all the letters of the complaints that Mr. Marr is
19 aware of.

20 MS. MURAN-FELTON: Again, the company objects.
21 If Mr. Marr wants to testify as to what the letters
22 are currently before him right now, that's relevant

1 because --

2 MS. SCARSELLA: They had their opportunity to
3 object when Mr. Lowe was questioning him about
4 complaints.

5 JUDGE BRODSKY: Ms. Felton, explain your argument
6 as to relevancy.

7 MS. MURAN-FELTON: Well, these letters that are
8 currently before us Mr. Lowe has inquired about
9 them. The fact that there's any other letters, if
10 at all, we don't have those in front of us.

11 Mr. Marr didn't seem to have an amount in
12 mind as to how many there were or the source of them
13 and the fact of the matter these are the only
14 letters currently before him, the ones that he
15 currently has.

16 JUDGE BRODSKY: So you are saying that the
17 current question's outside the scope of the cross?

18 MS. MURAN-FELTON: Doesn't seem -- yes, it's
19 beyond what we're currently discussing and beyond
20 the scope of what is before Mr. Marr at this time,
21 which is just the letters in front of him.

22 MR. LOWE: If your Honor please, if the witness

1 is testifying that he has personal knowledge that
2 there are other complaints, other than the ones in
3 his possession, I think that's perfectly reasonable
4 and proper testimony even if he doesn't have them
5 with him or even know what they say.

6 MS. SCARSELLA: Absolutely, your Honor. Mr. Marr
7 testified he was aware of complaints. He just
8 happened to have 11 of the complaints with him, but
9 he's aware of others and that was what Mr. Lowe
10 asked him, and that's what we would like to clarify
11 so there is no confusion on the record that his
12 knowledge is only limited to these 11. His
13 knowledge is beyond that, and if the company had an
14 objection, they should have objected to when
15 Mr. Lowe asked the question.

16 MS. MURAN-FELTON: In fact, there still is
17 confusion and the best evidence would have been
18 actually to provide those other letters.

19 MR. LOWE: I don't think the best evidence rule
20 is applicable at all here, your Honor.

21 JUDGE BRODSKY: I'm going to allow the question.
22 We'll see where that goes, and if there are further

1 problems, we'll take them as they come up.

2 MS. SCARSELLA: Q. Mr. Marr, other than the
3 letters that were stipulated by the intervenors and
4 the applicant, the only letters of complaints that
5 you are aware of with respect to the utility?

6 A. No, there are other complaints.

7 Q. How did you become aware of those
8 complaints?

9 A. Through our Consumer Services Division.

10 Q. When did you become aware of those
11 complaints?

12 MS. MURAN-FELTON: I'll just object to this line
13 of questioning. This is hearsay.

14 MR. LOWE: I don't believe it's hearsay, your
15 Honor.

16 MS. SCARSELLA: I mean, one arm of the Commission
17 can't speak to the other? This is hearsay. This is
18 our Consumer Service Division sending complaints to
19 the water department. It's within its personal
20 knowledge as well.

21 JUDGE BRODSKY: Okay. So is he testifying as to
22 letters he reviewed or is he testifying to letters

1 received by Consumer Services?

2 MS. VON QUALEN: That's a question for the
3 witness.

4 JUDGE BRODSKY: Well, since it's your question,
5 I'm trying to determine what the scope of your
6 question is.

7 MS. VON QUALEN: What we are trying to -- trying
8 to determine from Mr. Marr is his knowledge about
9 other complaints. We're not trying to get evidence
10 into the record about the truth of the complaints or
11 any of the facts about the complaints. We're trying
12 to get into the record what Mr. Marr knows about the
13 number of complaints and who the complaints were
14 from.

15 JUDGE BRODSKY: All right. I want to hear the
16 question.

17 MS. MURAN-FELTON: I just want, for the record,
18 to object because we don't even know if he hasn't
19 seen them whether or not their complaints.

20 (Question read by
21 reporter.)

22 JUDGE BRODSKY: So it's certainly not hearsay.

1 Ms. Felton, remind me of your other objection.

2 MS. MURAN-FELTON: I'm not sure what the issue
3 has to do --

4 MS. SCARSELLA: We are not presenting them.
5 We're just asking him if whether he's aware of
6 complaints received by Consumer Services.

7 JUDGE BRODSKY: Okay. Explicit as to the period
8 of time, the objections are overruled.

9 MR. LOWE: Your Honor, if I could ask for a
10 clarification, apparently your Honor referred to the
11 written documents that are in the possession of the
12 witness as having come from people who lived in the
13 Lost Nation part of the service area and were
14 serviced by the small lines.

15 MR. ARMSTRONG: I don't think we stipulated to
16 that.

17 MR. LOWE: It's not a stipulation, but you made a
18 reference to the small lines. As a matter of fact,
19 at least two of those letters are from people who
20 are not on the small line.

21 JUDGE BRODSKY: Okay. This was in the prior
22 discussion. This is already --

1 MR. LOWE: I don't want to make it too easy.

2 JUDGE BRODSKY: And, in any case, I don't think I

3 can accept that comment because it's starting to

4 sound like testimony, but, in any case, we'll take

5 the stipulation on the record as it was

6 stipulated --

7 MR. LOWE: Fine.

8 JUDGE BRODSKY: -- and we are going to move on

9 from there.

10 MS. SCARSELLA: May I continue my redirect?

11 JUDGE BRODSKY: Yes, you may. Actually was there

12 ever an answer issued to the question?

13 MS. SCARSELLA: That's a good question.

14 JUDGE BRODSKY: Re-ask the question and let's get

15 the answer.

16 MS. SCARSELLA: Q. I believe I left off when did

17 you become aware of the complaints?

18 A. I believe -- I believe we first inquired our

19 Consumer Services Division around the time of the

20 previous rate case filing, which was Docket No.

21 04-0321.

22 Q. How did you become aware of these

1 complaints?

2 A. Consumer Services Division received the
3 letters and they forwarded them to me and I --

4 Q. You were actually in actual receipt of
5 letters?

6 A. Yes. I reviewed them, yes.

7 Q. Do you know whether the complaints all came
8 from the Lost Nation or not?

9 A. No, I do not know which area they came from.

10 MS. SCARSELLA: Nothing further.

11 JUDGE BRODSKY: Anything further from the
12 company --

13 MS. MURAN-FELTON: Nothing further.

14 JUDGE BRODSKY: -- or from Mr. Lowe?

15 MR. LOWE: Nothing further, your Honor.

16 JUDGE BRODSKY: Okay. Thank you, Mr. Marr.

17 Okay. Who's next? Mr. Griffin?

18 MS. VON QUALEN: Judge, this morning took a
19 little longer than what I expected. I would ask if
20 we could take our lunch break now and come back with
21 Mr. Griffin's testimony after lunch. I expect that
22 his testimony will actually take a little longer

1 than the witnesses that we called this morning and I
2 am getting hungry.

3 MS. MURAN-FELTON: I don't think ours will be
4 more than 20 minutes. All right.

5 JUDGE BRODSKY: 11:30?

6 MS. MURAN-FELTON: All right.

7 JUDGE BRODSKY: How about -- let's go off the
8 record for a minute.

9 (Off the record.)

10 Go back on the record.

11 (Witness sworn.)

12 Thank you.

13 THOMAS GRIFFIN,

14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY

18 MS. VON QUALEN:

19 Q. Good morning, Mr. Griffin.

20 A. Good morning.

21 Q. Please state your full name for the record.

22 A. Thomas L. Griffin.

1 Q. Who is your employer and what is your
2 business address?

3 A. I'm an accountant in the Financial Analysis
4 Division of the Public Utility Division of the
5 Illinois Commerce Commission.

6 Q. Mr. Griffin, did you provide written -- did
7 you prepare testimony and exhibits for submittal in
8 this proceeding?

9 A. Yes, I did.

10 Q. Do you have before you a document which is
11 marked as ICC Staff Exhibit 2.0-R Revised Direct
12 Testimony of Thomas L. Griffin?

13 A. Yes.

14 Q. And does that document consist of 15
15 typewritten pages entitled "Revisions to Staff
16 Exhibit 2.0?"

17 A. Yes.

18 Q. And --

19 MR. ARMSTRONG: Is it 2.0-R or 2.0?

20 MS. VON QUALEN: 2.0-R, sorry,

21 MS. VON QUALEN: Q. And including numerous
22 schedules?

1 A. Yes.

2 Q. Do you also have before you a document which

3 has been marked for identification as ICC Staff

4 Exhibit 7.0, Supplemental Direct Testimony of Thomas

5 L. Griffin?

6 A. Yes.

7 Q. Does that consist of four typewritten pages

8 with one schedule attached?

9 A. Yes.

10 Q. Do you have before you a document which is

11 marked as ICC Staff Exhibit 11.0, Second

12 Supplemental Direct testimony of Thomas L. Griffin?

13 A. Yes.

14 Q. And does that document consist of eight

15 typewritten pages with several schedules?

16 A. Yes.

17 Q. Do you have any additions or changes to

18 Staff Exhibit 2.0-R, 7.0, or 11.0?

19 A. Well, I noticed this morning on Staff

20 Exhibit 11.0, Page 2, Line 23, there's a

21 typographical error. Schedule 2.06-W should read

22 Schedule 2.06-S.

1 MR. ARMSTRONG: What line?

2 THE WITNESS: Line 23.

3 MS. VON QUALEN: Q. Is that the only addition or
4 change that you have?

5 A. Yes.

6 MR. LOWE: I'm sorry. I didn't catch that
7 change.

8 MS. VON QUALEN: If you look at Line 23 on Line 1
9 of 11.0, Mr. Griffin has indicated 2.06-W should
10 actually read as 2.06-S.

11 MR. LOWE: Thank you.

12 MS. VON QUALEN: Q. With that change to Staff
13 Exhibit 11.0-R, are Exhibits 2.0-R, 7.0, and 11.0,
14 true and correct to the best of your knowledge?

15 A. Yes, they are.

16 Q. If I were to ask you the same questions
17 today, would your answers be the same?

18 A. Yes.

19 MS. VON QUALEN: Your Honor, at this time I move
20 for admission into evidence of ICC Staff Exhibit
21 2.0-R with attached schedules, which was filed
22 electronically on February 14, 2005, Staff Exhibit

1 7.0, with attached schedule, which was filed
2 electronically on March 8, 2005, and ICC Staff
3 Exhibit 7, 11.0, but it appears I'm going to have to
4 file a revised version of 11.0, so it will be
5 11.0-R, which will have only one change, which is
6 the change that Mr. Griffin just testified to.

7 MR. ARMSTRONG: 11.0-R is the one with to change
8 the W to S?

9 MS. VON QUALEN: Yes. I have not prepared that
10 yet. I'll be filing that probably tomorrow.

11 MR. ARMSTRONG: Do it on its face.

12 JUDGE BRODSKY: Okay. Any objection?

13 MS. MURAN-FELTON: No objection.

14 JUDGE BRODSKY: Hearing none, then those items
15 are admitted subject to cross.

16 (Whereupon, Staff Exhibit
17 Nos. 2.0-R, 7.0, and.
18 11.0-R were received in
19 evidence.)

20

21

22

1 CROSS EXAMINATION

2 BY

3 MS. MURAN-FELTON:

4 Q. Good morning, Mr. Griffin.

5 A. Good morning, Ms. Muran-Felton.

6 Q. Did anyone review your testimony set forth
7 in Exhibit 2.0-R, 7.0, and 11.0 before it have filed
8 in this case?

9 A. Did anybody review it?

10 Q. Yes.

11 A. The Commission has a procedure whereby staff
12 testimony before its filed is reviewed by other
13 people in the department, yes.

14 Q. Who is it reviewed by in your case?

15 A. Mrs. Struck reviewed it --

16 Q. And --

17 A. -- and Ms. Selvaggio.

18 Q. Did any -- was your testimony set forth in
19 any of these exhibits filed by the counsel for the
20 Commission? Was it filed by staff attorneys?

21 A. They were filed by staff attorneys, yes.

22 Q. Did the staff attorneys for the Commission

1 have the opportunity to review your testimony prior
2 to filing it?

3 A. Did the staff?

4 Q. Staff counsel.

5 A. Counsel they did review it, yes.

6 Q. And that would be both Ms. Scarsella and
7 Ms. Von Qualen?

8 A. To my knowledge, yes.

9 Q. In Staff Exhibit 2.0 filed on February 14,
10 2005 you testified that certain expenses should be
11 excluded because they arose from agreements between
12 New Landing, affiliated interests of New Landing and
13 had not been approved by the Commerce Commission; is
14 that correct?

15 A. Yes.

16 Q. You concluded at that time Mr. Armstrong's
17 law firm was an affiliated interest of New Landing;
18 is that correct?

19 A. That's correct.

20 Q. And you concluded that the Commission had
21 not approved any agreement between the utility and
22 Mr. Armstrong's firm; is that correct?

1 A. That's my understanding, yes.

2 Q. And you concluded that this -- for this
3 reason the Commission should exclude from all --
4 exclude legal expenses from -- all fees for legal
5 services provide by Mr. Armstrong's law firm; is
6 that correct?

7 A. As a matter of fact, Mr. Armstrong has
8 subsequently filed with the Commission for approval
9 of the agreement, and that's pending.

10 Q. And then in that testimony you also
11 concluded, Mr. Griffin, that CAM Properties was an
12 affiliated interest of New Landing Utility; is that
13 correct?

14 A. Yes, ma'am.

15 Q. You concluded that the Commission had not
16 approved of any agreement between the utility and
17 CAM Properties; is that correct?

18 A. Again, that petition has been made to the
19 Commission, and it's now pending.

20 Q. And you concluded that for this reason the
21 Commission should exclude from expenses all rents
22 paid or due to CAM Properties; is that correct?

1 A. That's correct.

2 Q. And in that testimony, Mr. Griffin, you
3 concluded that DAME Company was an affiliated
4 interest of New Landing; is that correct?

5 A. Yes.

6 Q. And isn't it correct you concluded that the
7 Commission had not approved any agreement between
8 the utility and DAME Company; is that correct?

9 A. That's correct.

10 Q. And you concluded that for this reason the
11 Commission should exclude from its expenses for
12 management services -- all amounts for management
13 services provided by DAME Company; is that correct?

14 A. Yes.

15 Q. At the time that you prepared this staff
16 exhibit, you knew that Staff Exhibit 2.0-R filed on
17 February 14, 2005 you knew that Mr. Armstrong's son
18 Matthew was providing service to New Landing, didn't
19 you?

20 A. I don't recall knowledge of who the person
21 was performing that service. I knew there was
22 someone performing billing services. I did not at

1 the time recall it was Matthew Armstrong.

2 MS. MURAN-FELTON: Just one second.

3 (A brief pause.)

4 MS. MURAN-FELTON: Q. Mr. Griffin, did you
5 review responses to the company's data requests from
6 the staff to the company?

7 A. From staff to the company, yes. Which ones
8 are you talking about?

9 Q. Specifically Data Request 4.7. That's Staff
10 Cross Exhibit 10, which I can provide to you if you
11 like.

12 (Document tendered.)

13 A. There's no date. I don't -- I did not send
14 that data request out myself. I do not recall
15 seeing that before February 8.

16 MR. ARMSTRONG: Before when?

17 MS. MURAN-FELTON: February 8.

18 MS. MURAN-FELTON: Q. The testimony you filed on
19 February 15 you don't recall seeing this before
20 February 15?

21 A. February 15?

22 Q. Excuse me, 14. Pardon me. February 14 you

1 filed this testimony.

2 A. February 14 is when I filed my Exhibit 2.0-R
3 and I don't recall seeing that before.

4 Q. When, if at any time -- could I have just
5 one minute.

6 (A brief pause.)

7 JUDGE BRODSKY: Are there going to be further
8 questions?

9 MS. MURAN-FELTON: I'm sorry. Just one minute.

10 (A brief pause.)

11 MS. MURAN-FELTON: Q. Mr. Griffin, does staff
12 counsel make available to you all data request
13 responses in preparation of your testimony?

14 A. They don't make available per se. They're
15 available on -- all data request responses have been
16 sent interoffice mail so that they were available.
17 I just have not reviewed that particular one because
18 I'm not the one who sent it before I prepared my
19 testimony.

20 Q. Okay. So going back to the question I had
21 for you about first Mr. Armstrong's son Matthew, at
22 the time you prepared your testimony on February 14,

1 you did not -- you did not include -- at the time
2 you did not include any testimony that Matthew was
3 an affiliated interest?

4 A. No.

5 Q. And at the time you prepared that testimony,
6 you did not include in your testimony about any
7 opinions regarding whether or not Ann Armstrong was
8 an affiliated interest?

9 A. Ann Armstrong wouldn't have been an issue
10 because she was not incurring any expenses in the
11 test year that I was reviewing.

12 Q. And is your opinion now that Mrs. Armstrong
13 is an affiliated interest?

14 A. Yes.

15 Q. And at the time that you prepared your
16 testimony in February 14, 2005, did you conclude
17 that Mr. Armstrong's mother was an affiliated
18 interest?

19 A. No, I did not take issue with
20 Mr. Armstrong's mother at all. It was not an issue
21 again in that particular review.

22 Q. And do you think so now? Do you think his

1 mother now is an affiliated interest?

2 A. It's my opinion now that she was an
3 affiliated interest.

4 Q. In your most recent testimony filed on March
5 30, Mr. Griffin, you concluded that Matthew
6 Armstrong, and Ann Armstrong, and Mr. Armstrong's
7 mother are affiliated interests in your opinion; is
8 that correct?

9 A. That's correct.

10 Q. And you base that on the section of the
11 Illinois statute 220 ILCS 5-7-1012?

12 A. I saw H at the end of that.

13 Q. Subsection H; is that correct?

14 A. Correct.

15 Q. And Subsection H has to do with people who
16 are part of the family of an officer or director of
17 a utility; is that correct?

18 A. As I recall, I don't have that section in
19 front of me now.

20 Q. I can provide one for you.

21 A. (Witness reviewed document.) It refers to
22 people who are related by ownership or blood

1 relationship.

2 Q. And Matthew is not an owner of the utility,
3 is he?

4 A. No, he's -- but he is a blood relationship
5 which is why I considered him an affiliated
6 interest.

7 Q. And Ann's not an owner?

8 A. Of the utility?

9 Q. Right.

10 A. No.

11 Q. Mr. Armstrong's mother is not an owner?

12 A. No.

13 Q. And Subsection H has to do with a person
14 who's exercising control over a utility through a
15 family member; is that correct?

16 MS. VON QUALEN: Your Honor, I'm going to object
17 to this line of questioning. Mr. Griffin did
18 reference 7-101 H, but I believe now Ms. Felton is
19 getting into legal argument and we have not provided
20 Mr. Griffin as a legal expert. This kind of
21 argument can be made in briefs and I don't think
22 that our lay witness should be subjected to

1 cross-examination about it.

2 JUDGE BRODSKY: Sustained.

3 MR. ARMSTRONG: Is he going to take out his
4 reference to the testimony they're affiliated
5 interests? He's not going to draw a legal opinion
6 and he shouldn't put in his testimony.

7 MS. MURAN-FELTON: Mr. Griffin has made a
8 conclusion and in his mind that these particular
9 parties are affiliated interests and he's referenced
10 Subsection H.

11 JUDGE BRODSKY: Save it for briefs and spare me
12 the editorial, Mr. Armstrong.

13 MS. MURAN-FELTON: Q. Mr. Griffin, have you or
14 has any member of the Commission, as far as you
15 know, conducted any investigation or hearing
16 regarding whether or not either Matthew Armstrong,
17 Ann Armstrong, or Mr. Armstrong's mother are
18 affiliated interests?

19 A. No. Mr. Armstrong has not filed a petition
20 for an affiliated interest finding in that agreement
21 with those two cases. The only agreement --
22 petition that I'm aware of for approval under

1 affiliated interests would be for the law firm and
2 for CAM Properties.

3 Q. But, to your current knowledge, has the
4 Commission investigated whether or not these
5 entities are affiliated interests?

6 A. The Commission has not to my knowledge.

7 Q. And, to your knowledge, there's been no
8 hearing with respect to whether or not these three
9 entities are affiliated interests?

10 MS. VON QUALEN: Your Honor, I object. This has
11 been asked and answered.

12 MS. MURAN-FELTON: Actually, no. I asked whether
13 there's been an investigation. Hearings is a
14 separate request.

15 JUDGE BRODSKY: Read the question back.

16 (Question read by
17 reporter.)

18 MS. VON QUALEN: The answer to the question about
19 whether there was an investigation.

20 JUDGE BRODSKY: You can't answer the question for
21 him.

22 You may answer the question.

1 MS. VON QUALEN: I was objecting, your Honor.
2 I'm objecting because he already answered that there
3 has been no investigation and I think it is only
4 rational that if there has been no investigation
5 there has been no hearing. It would be very unusual
6 to have a hearing before there had been an
7 investigation.

8 MS. MURAN-FELTON: But he can answer what he
9 knows.

10 JUDGE BRODSKY: It's a simple matter. I'll allow
11 it.

12 THE WITNESS: Just to be clear, could you
13 identify the three entities we're talking about?

14 MS. MURAN-FELTON: Q. Yes. Matthew Armstrong,
15 Ann Armstrong, and Mr. Armstrong's mother.

16 A. There has been no finding or investigation
17 as far as I know.

18 Q. Do you believe that Matthew Armstrong
19 controls what the utility does by telling
20 Mr. Armstrong what to do?

21 A. I have no knowledge of that, not to my
22 knowledge.

1 Q. Do you believe that Ann Armstrong controls
2 the utility by telling Mr. Armstrong what to do --
3 A. I don't know if Ann Armstrong tells
4 Mr. Armstrong what to do.
5 Q. -- with respect to the utility --
6 MR. ARMSTRONG: That --
7 JUDGE BRODSKY: Enough.
8 MS. MURAN-FELTON: Q. -- with respect to the
9 utility?
10 A. No, not to my knowledge.
11 Q. And with respect to Mr. Armstrong's mother,
12 Ms. Violet (sic) Armstrong, do you believe that she
13 in any way controls the utility by telling
14 Mr. Armstrong what to do?
15 A. I believe Mrs. Armstrong is deceased.
16 Q. Yes.
17 A. Well, to my knowledge, she had not.
18 Q. Mr. Griffin, with respect to the water tower
19 renovation, you make some recommendations that
20 the -- considering that the total bill you testified
21 that would be \$80,000 to renovate the water tower,
22 is that correct?

1 A. Yes.

2 Q. Is that for this year only?

3 A. Oh, the payments?

4 Q. Payments for this year.

5 A. Payments for this year would be I think was

6 88 something.

7 Q. And you testified that it would be

8 appropriate to include this figure into the rate

9 base because this will be paid over a couple of

10 years?

11 A. No, that's not exactly right. What I did

12 was I included the 88,000 and amortized it over ten

13 years.

14 Q. But right now you only allow \$8,000 to be

15 factored into the rate; is that correct?

16 A. Approximately 8800, yes.

17 Q. And how do you expect the utility to pay for

18 the 88,000 now if you are only factoring in 8,000

19 into your rate?

20 A. What I was doing was making adjustments to

21 the utility's revenue requirement. If I were to put

22 the entire \$88,000 into current year's expenses, for

1 the entire life of these rates the customer would be
2 paying \$88,000. That is not an appropriate way to
3 set rates.

4 Q. If I might respectfully request again you
5 answer the question. It doesn't specifically answer
6 how you are expecting the utility to pay for \$88,000
7 now.

8 A. If they don't have sufficient funds from
9 rates, they need to go and borrow money.

10 Q. If they borrow money, they need to have
11 Commission approval; is that correct?

12 A. I'm not sure. I know for certain capital
13 expenditures they need Commission approval. I don't
14 know if they would fall in that category or not.

15 Q. Why not propose a rate that would sunset at
16 a date certain to be segregated into a separate fund
17 so that the utility can pay for the renovation?

18 A. I'm sorry. Would you read that back.

19 (Question read by
20 reporter.)

21 MS. VON QUALEN: Your Honor, I'm going to object
22 to that question because I believe that is a rate

1 design question. That's not a revenue requirement a
2 rate base question.

3 JUDGE BRODSKY: Is there a response from the
4 company?

5 (No response.)

6 Well, absent a response, I'm going to
7 allow the question. If he knows, he can answer. If
8 he doesn't know, that's an answer, too.

9 THE WITNESS: That's a unique approach I never
10 heard of. That is not the approach for setting a
11 revenue requirement that I have ever seen.

12 MS. MURAN-FELTON: Q. If that approach were
13 taken, would that save on interest on a loan for
14 instance?

15 A. Would it save on interest as opposed to him
16 borrowing money?

17 Q. Correct.

18 A. Well, there would be no interest if that
19 were the case, sure. If he didn't borrow money,
20 there wouldn't be any interest. Is that what you
21 mean?

22 Q. That's what I mean.

1 Mr. Griffin, to the legal fees, you
2 again spread the -- and/or amortized legal fees over
3 a five-year period; is that correct?

4 A. No. I think what you are doing is you're --
5 what you need to do is read my testimony 1.0 as well
6 as 2.0-R. In 11.0, I have adopted Mr. Effron's
7 position on legal fees, so I'm no longer armotizing
8 legal fees over five years.

9 Q. Is it your opinion, Mr. Griffin, that the
10 legal fees that were paid to outside counsel in the
11 enforcement proceedings in Ogle County are improper?

12 A. I believe that the company does have a right
13 to defend itself. One of the reasons I chose to
14 adopt Mr. Effron's position was that the legal --
15 outside legal fees for that particular case I could
16 not separate between how much of the legal fees were
17 paid to defend New Land Utility and how much was
18 paid to defend Mr. Armstrong personally since I
19 understand that the lawsuit was against both the
20 utility and Mr. Armstrong. I don't think it would
21 be proper for the utility to pay for legal fees to
22 defend Mr. Armstrong personally.

1 Q. But, as president of the utility, you would
2 believe that would be proper for a utility to incur
3 those fees -- legal fees with respect to
4 Mr. Armstrong as president of the utility?

5 A. Not to the extent it was for a personal
6 lawsuit, no, I don't believe so.

7 Q. But in his capacity as president in the
8 suit, as president --

9 A. As a representative of New Landing, that
10 portion of the lawsuit that was against New Landing
11 I believe is something that the utility has a right
12 to defend itself against in that case. That's why I
13 amortized that portion over five years in my
14 original testimony.

15 Q. And in either case, either amortizing it or
16 adopting Mr. Effron's testimony, how do you propose
17 the utility's suppose to pay for the legal fee
18 billing?

19 A. The purpose of my testimony is to develop a
20 revenue requirement that's appropriate for the
21 utility and that would include annual expenses that
22 are appropriate for ratepayers to pay.

1 Mr. Effron's approach was to use a level
2 of legal expenses, which I understand Mr. Armstrong
3 agreed, would be appropriate for a small utility his
4 size, so I think that was an appropriate amount
5 level.

6 Q. Okay. Nonetheless though, how do you
7 propose the utility's suppose to pay that legal fee
8 bill?

9 MS. VON QUALEN: Your Honor, I object. This
10 question has been asked and answered.

11 MS. MURAN-FELTER: It actually hadn't been
12 answered, so I propose if he knows that he answer
13 it.

14 JUDGE BRODSKY: If you know the answer, you may
15 answer it. If you don't, that's an answer, too.

16 THE WITNESS: The level of expense does not go to
17 any particular legal bill. It's a level of legal
18 expense which should be covered by ratepayers.

19 MS. MURAN-FELTON: Q. You're still not answering
20 the question, maybe you don't know or --

21 A. Well, I thought I was answering the
22 question. It's not designed to pay a particular

1 legal fee in this case. When you set a particular
2 legal defense, there can be Ogle County lawsuits
3 involved in there. There could be other lawsuits.
4 It's just a level of expenses for ratemaking
5 purposes. Rates aren't designed necesssarily to pay
6 specific bills. They're designed to pay legal
7 costs.

8 Q. So in this case how do you pay the legal
9 bills?

10 A. Well --

11 MS. VON QUALEN: Again, I object. At this point
12 it's becoming badgering. Mr. Griffin has explained
13 what the purpose of his testimony is to set revenue
14 requirements and how rates are set. He has stated
15 at least once, if not twice, that the purpose of
16 this case is not to pay specific bills that New
17 Landing hasn't occurred.

18 JUDGE BRODSKY: Well, I have to agree at this
19 point about what you've got with the question, so
20 move on.

21 MS. MURAN-FELTON: Q. Mr. Griffin, in your
22 opinion are the rates designed to allow the utility

1 to pay its bills?

2 A. The rates are designed -- and I take it that
3 you are talking -- you are asking a question in the
4 context of my rate -- my adjustment to revenue
5 requirement as opposed to rate design?

6 Q. No.

7 A. Well, I don't design rates.

8 MS. VON QUALEN: Then, your Honor, I object to
9 this question because it's about rate design and we
10 have here an accounting witness who testified about
11 rate base and revenue requirement.

12 JUDGE BRODSKY: Ms. Felton, it seems like you are
13 heading in the rate design direction. Is that -- I
14 mean, if you have a specific question, then rephrase
15 it.

16 MS. MURAN-FELTON: Okay. I'll rephrase it.

17 MS. MURAN-FELTON: Q. Mr. Griffin, is it your
18 opinion that the utility should realize enough
19 revenue to pay its bills?

20 A. The utility should have a level of -- have
21 tariffs which will grant it an opportunity to pay a
22 reasonable level of expenses and to earn a return on

1 a reasonable investment that is serving the company.
2 That's what it's designed to do.

3 Q. And then in your opinion does that mean the
4 utility should not get enough to pay its bills?

5 A. Well, if the utility incurs bills that are
6 within the realm of the amount of money granted by
7 the Commission, they should be able to pay the
8 bills.

9 If the bills become higher, then -- as
10 granted by the Commission, then they should file for
11 a rate increase when that happens hopefully in time
12 for it to do some good so that when, and if, the
13 Commission agrees that that level of expenses is
14 proper, they would include it.

15 MS. MURAN-FELTON: If we could have just one
16 minute.

17 (A brief pause.)

18 We're almost done.

19 MS. MURAN-FELTON: Q. Mr. Griffin, just out of
20 clarification, in your schedule potentially -- it's
21 actually your Exhibit 2.0-R, Schedule 2.03-W. It's
22 REV-W revised, I believe.

1 A. Is that 2.03? Is that W or S?

2 Q. W-REV.

3 A. Okay.

4 Q. What does CWIP mean?

5 MS. VON QUALEN: On Line 15?

6 THE WITNESS: I'm trying to see if this one was

7 superceded. No, it wasn't. 203 -- I'm sorry. What

8 was your question again?

9 MS. MURAN-FELTON: Q. What is CWIP, the acronym

10 under Line 15?

11 A. CWIP?

12 Q. Uh-huh. Yes.

13 A. Oh, I'm sorry. That should be CIAC.

14 Q. What does that mean?

15 A. Contributions in aid of construction.

16 Q. Thank you.

17 And would that also be with respect to

18 Schedule 2.03-S? It's Line 8. You also reference

19 CWIP.

20 A. Without looking, I would say it probably is.

21 203-S?

22 Q. Right.

1 A. Yes.

2 Q. Thank you.

3 JUDGE BRODSKY: Are there any further questions?

4 MS. MURAN-FELTON: I think there's about one or

5 two follow-up questions.

6 MS. MURAN-FELTON: Q. Mr. Griffin, I'm turning

7 you to your second supplemental testimony filed on

8 March 30, Page 6.

9 A. Yes.

10 Q. Do you know -- you reference payment for

11 services to Mr. Armstrong's private residence. Do

12 you know that the utility stores records at

13 Mr. Armstrong's residence?

14 A. I have no idea.

15 Q. And if it did, if the utility did store

16 records at Mr. Armstrong's private residence,

17 wouldn't that be appropriate to pay an appropriate

18 and reasonable fee for storage?

19 A. Well, the problem with that is the company

20 has equipment and other things that -- other

21 facilities belonging to the company that is not

22 protected by the service, and I'm sure that even if

1 there was an argument to make for the storage of
2 company property at Mr. Armstrong's home, the entire
3 fee wouldn't be appropriate to put in rate base.

4 Q. Do you know exactly how the fee is
5 allocated?

6 A. I don't even know what is stored at
7 Mr. Armstrong's private residence, and there's
8 nothing allocated on the books.

9 Q. So --

10 A. It's all charged to New Landing on the
11 books.

12 Q. But you have no idea how that fee is
13 allocated?

14 A. Well, yes. It's a hundred percent allocated
15 to New Landing.

16 Q. And how exactly do you know that?

17 A. Because that is the amount that's on the
18 company's records.

19 Q. Have you looked at the company records,
20 Mr. Griffin? What is the amount?

21 A. There is more than one amount. The initial
22 payment -- and I don't have it with me at this time.

1 I could get it -- it's in excess of \$1100 to
2 install, then there's an annual fee of about \$240 I
3 believe.

4 Q. Mr. Griffin, do you know now is the utility
5 making any payments to Matthew Armstrong, Ann
6 Armstrong, or to other security services?

7 A. I'm not aware of any payments made to Ann
8 Armstrong. I believe from hearing Mr. Armstrong's
9 testimony yesterday that payment to Matthew
10 Armstrong may have stopped in September of 2004
11 whenever he went away to California, but they were
12 continuing in 2003 and 2004.

13 Q. And with respect to other security services?

14 A. Beg your pardon?

15 Q. Are there any other payments being made to
16 any other security services?

17 A. Security services?

18 Q. Yes.

19 A. Not that I'm aware of, no.

20 Q. And, like I said, the utility is not making
21 any payments to Mr. Armstrong's mother currently?

22 A. That's correct.

1 MS. MURAN-FELTON: I don't think I have anything
2 further. Thank you very much.

3 THE WITNESS: Thank you.

4 JUDGE BRODSKY: All right. That took a little
5 longer than projected, so we are going to break for
6 lunch at this point. We'll take an hour and 15
7 minutes.

8 Before we adjourn, I would like to note
9 that I don't expect people to be researching their
10 testimony and records to decide whether they have
11 cross while it's their turn for cross, and if that
12 seems to be happening again, cross is going to be
13 deemed to be waived, so please be organized when we
14 return from the lunch break. It's 12:20. We will
15 return at 1:35.

16 (Whereupon, a luncheon
17 break was taken.)

18

19

20

21

22

1 A F T E R N O O N S E S S I O N

2 JUDGE BRODSKY: All right. So we are back.

3 Is it still the case that both
4 intervenors have cross for Mr. Griffin?

5 MR. GARG: We do.

6 JUDGE BRODSKY: Who wants to proceed?

7 MR. GARG: I can go.

8 JUDGE BRODSKY: Okay. Mr. Griffin, I remind you
9 you are still under oath,

10 MR. GRIFFIN: Yes.

11 THOMAS L. GRIFFIN, (continued)

12 The witness on the stand at the time of recess,
13 resumed the stand and testified further as follows:

14 CROSS EXAMINATION

15 BY

16 MR. GARG:

17 Q. Good hello, Mr. Griffin.

18 A. Good morning -- afternoon.

19 Q. Can you please refer to Staff Exhibits
20 2.0-R, Schedule 2.03-S.

21 A. I'm sorry. I didn't hear the reference

22 Q. The schedule is 2.03-S.

1 A. W?

2 Q. S, the sewer one.

3 A. Okay.

4 Q. This schedule shows the contributions in aid
5 of construction for sewer, correct?

6 A. Yes.

7 Q. And the staff adjustments before the
8 reclassification for advances is listed as \$162,349;
9 is that correct?

10 A. Yes.

11 Q. Now this figure is less than what the
12 company proposed for contributions in aid to
13 construction; is that correct?

14 A. Yes.

15 Q. To the extent that the staff's proposal is
16 less than the company's calculation of contributions
17 in aid of construction, is it fair to say that in
18 effect staff is treating plant that was shown as
19 being contributed on the company's books as having
20 been acquired with investor funds?

21 A. With investor funds?

22 Q. Yes.

1 A. Well, the company showed an amount under
2 utility plant that was -- and then the portion of
3 that plant that is not acquired with investor funds
4 would be their contribution in aid of construction
5 which in this case is 804,596 of their total utility
6 plant they are saying was not provided by investor
7 funds.

8 Q. But, to the extent that -- that your
9 proposal for contributions in aid of construction is
10 less than what the company proposed to be the
11 contributions in aid of construction, wouldn't that,
12 in effect, reduce the deduction from rate base?

13 A. Yes.

14 Q. And wouldn't that treat -- if you have a
15 reduction in rate base, wouldn't that then be -- if
16 you are reducing the reduction to the rate base or
17 the deduction from the rate base, isn't that
18 treating some of the contributions as if they came
19 from investor funds?

20 A. Okay. Now to clarify the -- I am
21 disallowing a portion of the plant. Some of the
22 plant that I'm disallowing is contributed plant;

1 therefore, I have to reduce the amount of
2 contributed plant that's on the books also, so
3 it's -- the net effect is to reduce rate base but,
4 to the extent that I'm reducing plant that's already
5 out of rate base because it's contributed, I have to
6 add that back.

7 Q. Okay. Is there a -- is the contribution in
8 aid of construction that you propose less than that
9 which the company proposed other than -- other than
10 the contributions that you did not include in the
11 rate base?

12 A. Okay. Let's see if I understand. The
13 contributions in aid of construction that I'm
14 proposing is less than what the contributions in aid
15 of construction that the company is proposing, and
16 the reason for that is I have eliminated a
17 substantial amount of utility plant from the
18 company's rate base and some of that was
19 contributions in aid of construction.

20 Q. Okay. And then is this data count for all
21 of the differences between your proposal for
22 contributions in aid of construction and the

1 company's?

2 A. Yes.

3 Q. And was it a proportional decrease?

4 A. Well, I actually look at the plant that I'm
5 allowing and the contributions in aid of
6 construction that I'm allowing and then made that
7 adjustment. I didn't proportion it. I actually had
8 the contributions in aid of construction per asset
9 class and so I made that particular adjustment.

10 Q. Okay. So to clarify, if the contribution --
11 if the contributions in aid of construction exist on
12 the company's books, isn't it reasonable to infer
13 that these contributions were received from the --
14 were received by the company?

15 A. It's reasonable to conclude that that
16 represents plant that was not funded by investor
17 supplied capital and so it was a reduction from
18 their rate base, yes.

19 Q. Okay. Now it's true you mentioned that
20 contributions in aid of construction are a deduction
21 from the rate base?

22 A. That's correct.

1 Q. And would it also be the case then that --
2 it would also be the case, wouldn't it, that
3 contributions in aid of construction is a deduction
4 to net plant?

5 A. Yes, net plant is the major portion of the
6 rate base, and so that is true.

7 Q. Okay. Could I refer you to ICC Staff
8 Exhibit 2 point -- Exhibit 2.0-R, Schedule 2.01-S
9 just a few pages before.

10 A. Yes.

11 Q. And that's the utility plant for the
12 sewer --

13 A. Yes.

14 Q. -- schedule.

15 And it says the total staff adjustment is
16 a decrease of \$37,961.

17 A. That's correct.

18 Q. But you just testified that contributions in
19 aid of construction is a deduction from the net
20 plant, correct?

21 A. Yes.

22 Q. So could you explain the discrepancy between

1 the number you propose for contributions in aid of
2 construction, which is \$162,349, and why the total
3 adjustment to the net plant is \$37,961?

4 A. Okay. I guess I have -- the best way to
5 answer that is try to explain how I made my
6 calculation. The plant per company is in that Line
7 B and the plan per staff is in line -- or per that
8 order that initially establish plant is in Line C or
9 Column C.

10 MR. VON QUALEN: Mr. Griffin, are you referring
11 to 2.01-S?

12 THE WITNESS: 201-S?

13 MR. GARG: Yes.

14 THE WITNESS: Yes. The reduction I'm making in
15 plant is shown that the reduction made to
16 contributions in aid of construction is on 203,
17 which you said, and you are trying to make a
18 correlation between the two?

19 MR. GARG: Q. Well, if contributions in aid of
20 construction is suppose to be a reduction to net
21 plant, on Schedule 2.01 sewer, your total adjustment
22 to the net plant is 37,961.

1 A. I see your confusion. Yes, it is, because
2 what I did was I looked at the individual asset
3 categories independently, and there apparently was a
4 discrepancy on the company's books for contributions
5 in aid of construction which caused this amount to
6 go up.

7 I actually calculated what contributions
8 in aid of construction should be, according to the
9 records of the company and the original order of the
10 company that's in Docket 79-0673 and 79-0675 and
11 recalculated what the actual amount should be as
12 opposed to what the company has in its records and
13 so there was that discrepancy in contributions in
14 aid of contribution.

15 Q. And you calculated the contributions in aid
16 of construction. The number you came up with was
17 less than the company --

18 A. It had to be in that case.

19 Q. -- than the company proposed?

20 But still my question is if your
21 number -- if your calculation for contributions in
22 aid of construction is \$162,349, and contributions

1 in aid of construction are a deduction from net
2 plant, why is your total adjustment to the net plant
3 only \$37,961?

4 A. Yes. I understand. If you look -- the best
5 way to understand, if you look at the two schedules,
6 201-S and 203-S, you'll see that for collecting
7 structures the company only has \$436,684 on their
8 books.

9 The company was actually reporting less
10 plant than they actually had according to the reg
11 order, however, most of that or all of that plant is
12 contributed. The whole 469,723 is contributed, so
13 that accounts for why there is the difference
14 between the amount of plant and the amount of
15 contributions in aid of construction. It's just the
16 company did not have the proper amount on their
17 books for the collection structures and it all
18 happens to be contributed plant.

19 If you look at Column C on 201, the
20 account -- the line called -- the account called
21 amount per staff, which is the addition to C and D,
22 you will see that the collecting structure is

1 been in for a rate case in a long time, and so
2 basically what I had to do is create a utility plant
3 rate base for the company, and the method I used is
4 the method that has been approved by the Commission
5 in other water companies that were not keeping
6 continuously proper records, which is to take the
7 last Commission order, finding what the level of
8 plant is, and then adding to it known and measurable
9 changes. I did that as opposed to using what the
10 company had on their books and then I adjusted the
11 books for ratemaking purposes.

12 MR. GARG: Q. Okay. I would like to move to
13 another question. Can you refer to Staff Exhibit
14 No. 2, your testimony on Page 11, Lines 206, to 208,
15 to 209. Sorry.

16 A. 208, yes.

17 Q. Yes, to 206 to 209.

18 A. Okay.

19 Q. You state that -- I know you said they never
20 filed a tax return and that there is no evidence
21 that taxes were due in any of the years reviewed,
22 correct?

1 A. That's correct.

2 Q. Yet, staff is allowing an income tax expense
3 cost of service, correct?

4 A. Yes. Your question is why?

5 Q. Well --

6 A. Okay.

7 Q. Well, actually, isn't it true, in fact, that
8 NLU has actually been losing money?

9 A. Yes, they have been losing money.

10 Q. And if it's true that they have been losing
11 money, isn't it likely that NLU would have income
12 tax loss carry forwards?

13 A. It's possible they could have income tax
14 loss carry forwards; however, when we are
15 establishing rates for ratemaking purposes, we are
16 establishing a level of cost which going forwards
17 would be appropriate for that company.

18 On an going-forward basis, assuming the
19 company is allowed rates sufficient to give them
20 a -- to pay costs and give them a return, which
21 would be a profit for tax purposes, then the company
22 would need money to pay those taxes. Tax loss carry

1 forwards are not included in the -- in the
2 calculation, those taxes for ratemaking purposes.

3 Now in my second option referred to the
4 2.0R. In my second option that I refer to in 11.0,
5 there are no income taxes in that case because there
6 would be no profit per se.

7 Q. And you propose these two scenarios as
8 options for the Commission to decide upon?

9 A. I propose two options. Is that what your
10 question?

11 Q. Yes.

12 A. Yes. I propose two options that the
13 Commission can consider.

14 Q. But now if NLU has substantial income tax
15 loss carry forwards, then isn't it true it would not
16 actually have to pay required income taxes in the
17 future?

18 A. It's possible that they would not have -- in
19 the near future have to pay taxes if their tax loss
20 carry forwards wiped out the tax liability for any
21 given year, it's true.

22 Q. And isn't it true, in fact, that NLU itself

1 did not include income tax expense in its cost of
2 service?

3 A. It did not include that tax -- the income
4 tax expense --

5 Q. That NLU did not -- itself did not include
6 an income tax expense in its cost of service.

7 A. Tax loss carry forwards?

8 Q. An expense, an income tax expense --

9 A. Can they --

10 Q. -- that the utility itself cannot include.

11 A. The utility itself, no, because the
12 utility -- the utility exhibit shows a loss in all
13 their exhibits.

14 Q. So it being established that the utility had
15 been losing money, there is still -- anything
16 established that potentially the company would not
17 have to pay any income taxes in the foreseeable
18 future, isn't it true that you still set forth an
19 income tax expense for the company?

20 MR. VON QUALEN: Excuse me.

21 THE WITNESS: As I --

22 MR. VON QUALEN: Are you asking a hypothetical

1 question there?

2 MR. GARG: No, I'm not.

3 MS. VON QUALEN: Are you saying that it has been
4 established or are you saying if it were
5 established?

6 MR. GARG: I can rephrase my question.

7 MS. VON QUALEN: Thank you.

8 MR. GARG: Q. So it having been established that
9 NLU has been losing money --

10 A. It has been established that they have been
11 losing money in the past, yes.

12 Q. Right. And the potential, based on that
13 that NLU would not have to pay any income taxes in
14 the future, is it the case that you still set forth
15 an income tax expense for the company?

16 A. For ratemaking purposes, regardless of
17 whether or not they could apply tax loss carry
18 forwards for ratemaking purposes, it's appropriate
19 to establish a level of taxes as cost of service.

20 Q. And what do you base those taxes on then or
21 what do you base the income tax expense on?

22 A. The income tax expense is developed in

1 Mr. Struck's schedule, so he could probably answer
2 that.

3 Q. And do you know if it's the case that
4 Mr. Struck also presented two scenarios, one for
5 zero percent return on rate base?

6 A. Yes. In his Exhibit 10.0, he produces a
7 scenario based on my two recommendations.

8 Q. Okay. Okay. And I have one more question.
9 Can you please refer to Staff Exhibit 11.0, Schedule
10 11.01-W, Page 2, and then also concurrently if you
11 can look at Schedule 11 -- I'm sorry -- yes,
12 Schedule 11.03-S, Page 2.

13 A. Okay.

14 Q. Both of these schedules show a description
15 for a certified operator and an on-site manager be
16 an expense.

17 A. Yes.

18 Q. On 11.01-W, Page 2, there is an amount of
19 19,900 for the on-site manager and 5,000 for the
20 certified officer for water; is that correct?

21 A. Yes.

22 Q. And then for the sewer there's a certified

1 operator expense of 19,500 and an on-site manager
2 expense of 6,500.

3 A. Yes.

4 Q. Are you aware of how much is actually spent
5 on the on-site manager and certified operator?

6 A. Yes. These amounts were taken directly from
7 the company's books and records of payments made in
8 the test year.

9 Q. Okay. In light of Mr. Armstrong's testimony
10 yesterday, can you explain how you arrived at your
11 numbers?

12 A. I'm not sure which portion of
13 Mr. Armstrong's testimony you are referring to.

14 Q. I believe Mr. Armstrong testified that he
15 paid Rusty Cox, his water facility operator, \$500 a
16 month and that he paid Gregory Stechschulte \$1300 a
17 month to operate sewer facilities.

18 A. These costs include what the salary was,
19 plus any payments they made to the operator to
20 reimburse for expenses as I recall.

21 Q. What date were your figures made pursuant
22 to?

1 REDIRECT EXAMINATION

2 BY

3 MS. VON QUALEN:

4 Q. Mr. Griffin, do you recall when Ms. Felton
5 asked you some questions in regard to whether
6 Mr. Armstrong's wife and whether Mr. Armstrong's
7 mother had any control over New Landing Public
8 Utility?

9 A. Yes, I do.

10 Q. Do you have any opinion as to whether
11 Mr. Armstrong's wife or Mr. Armstrong's mother has
12 any control over the New Landing Public Utility?

13 A. No.

14 MS. MURAN-FELTON: Was this asked and answered by
15 me?

16 THE WITNESS: No, I do not.

17 MS. VON QUALEN: Thank you. That's all the
18 questions I have.

19 JUDGE BRODSKY: Okay. Did you have anything
20 further?

21 MS. MURAN-FELTON: No. No thank you.

22 JUDGE BRODSKY: Okay. Thank you, Mr. Griffin.

1 MS. VON QUALEN: Staff calls Scott Struck.
2 (Witness sworn.)
3 JUDGE BRODSKY: Thank you.
4 SCOTT A. STRUCK,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:
7 DIRECT EXAMINATION
8 BY
9 MS. VON QUALEN:
10 Q. Please state your name for the record.
11 A. My name is Scott A. Struck.
12 Q. Who is your mother and what is your business
13 address?
14 A. I'm currently employed as a supervisor in
15 the Accounting Department of the Financial Analysis
16 Division of the Illinois Commerce Commission. My
17 business address is 527 East Capitol Avenue,
18 Springfield, Illinois, 62701.
19 Q. Mr. Struck, did you prepare testimony and
20 exhibits for submittal in this proceeding?
21 A. Yes, I did.
22 Q. Do you have before you a copy of a document

1 that has been marked as ICC Staff Exhibit 1.0-R,
2 Revised Direct Testimony of Scott A. Struck?

3 A. Yes, I do.

4 Q. And does that document consist of five
5 typewritten pages and attached schedules?

6 A. Yes, it does.

7 Q. Did you prepare ICC Staff Exhibit 1.0-R for
8 submittal in this proceeding?

9 A. Yes, I did.

10 Q. Do you have any additions or corrections to
11 make to ICC Staff Exhibit 1.0-R?

12 A. No.

13 Q. Do you also have before you ICC Staff
14 Exhibit 6.0, Supplemental Direct Testimony of Scott
15 A. Struck?

16 A. Yes, I do.

17 Q. And does that testimony consist of four
18 typewritten pages and numerous attached schedules?

19 A. Yes, it does.

20 Q. Did you prepare ICC Staff Exhibit 6.0 for
21 submittal in this proceeding?

22 A. Yes, I did.

1 Q. Do you have any additions or corrections to
2 make to Staff Exhibit 6.0?

3 A. No.

4 Q. Mr. Struck, do you have before you a copy of
5 a document that has been marked as ICC Staff Exhibit
6 10.0, Second Supplemental Direct Testimony of Scott

7 A. Struck?

8 A. Yes, I do.

9 Q. Did you also prepare that document for
10 submittal in this proceeding?

11 A. Yes.

12 Q. Do you have any additions or corrections to
13 make to ICC Staff Exhibit 10.0?

14 A. No.

15 Q. Is the information contained in ICC Exhibit
16 1.0-R, 6.0, and 10.0 true and correct to the best of
17 your knowledge?

18 A. Yes.

19 Q. If I were to ask you the same questions that
20 are contained in those three exhibits, would your
21 answers be the same today?

22 A. Yes, they would.

1 MR. VON QUALEN: The exhibits I have been
2 referring to were filed on e-Docket 1.0-R was filed
3 on February 14, 2005, Exhibit 6.0 was filed on March
4 8, 2005, and Exhibit 10.0 was filed on March 30,
5 2005.

6 At this time, Judge, I would move for
7 these exhibits, Exhibit 1.0-R, Exhibit 6.0, and
8 Exhibit 10.0, to be entered into evidence.

9 JUDGE BRODSKY: Any objection?

10 MS. MURAN-FELTON: Company has no objection other
11 than the fact that we had agreed to one stipulation
12 but no objection to the testimony itself.

13 JUDGE BRODSKY: Okay.

14 MR. LOWE: No objection.

15 MR. GARG: No objection.

16 JUDGE BRODSKY: Then those exhibits will be
17 admitted subject to cross and subject to the
18 discussed stipulation.

19 (Whereupon, Staff
20 Exhibit Nos. 1.0-R,
21 6.0, and 10.0 were
22 received in evidence.)

1 MS. MURAN-FELTON: Yes. Your Honor, the company
2 and staff has discussed Mr. Struck's testimony and
3 have come to a stipulation that I think everyone's
4 willing to, at least staff and the company, are
5 willing to accept and that is that I'll read it for
6 the record in Schedules 6.01-W, and 6.01-S, as well
7 as in Schedule 1.01-W and 1.01-S, Mr. Struck,
8 incorporates the rate of return of 8.38 into his
9 calculation of the revenue requirements in those
10 schedules.

11 If the rate of return is higher, such as
12 10.3, or 11.2, or any other amount, then the net
13 operating income would also be proportionately
14 higher.

15 JUDGE BRODSKY: Does staff so stipulate?

16 MS. VON QUALEN: Yes.

17 JUDGE BRODSKY: Okay. For the record, is anybody
18 else joining in the stipulation?

19 MR. LOWE: We will.

20 MS. SATTER: We're not going to join in the
21 stipulation.

22 JUDGE BRODSKY: Okay. But it doesn't sound like

1 you are objecting to it either.

2 MS. SATTER: No.

3 JUDGE BRODSKY: So noted. Do you wish to

4 proceed?

5 MS. MURAN-FELTON: I don't have any further

6 questions for Mr. Struck in light of that

7 stipulation.

8 JUDGE BRODSKY: Okay. Anything further from the

9 intervenors?

10 MR. GARG: I have one question.

11 JUDGE BRODSKY: Okay.

12 CROSS EXAMINATION

13 BY

14 MR. GARG:

15 Q. Hello, Mr. Struck.

16 A. Hello.

17 Q. Could you please refer to Staff Exhibits

18 10.01-W and 10.01-S. Isn't it true that staff --

19 MR. ARMSTRONG: What number?

20 MR. GARG: 10.01-W and 10.01-S.

21 MR. GARG: Q. Isn't it true that staff is

22 allowing an income tax -- an income tax expense for

1 both federal and state income taxes in the cost of
2 service?

3 A. It's correct that staff's revenue
4 requirement does include income taxes in both those
5 Schedules 10.01-W and 10.01-S.

6 Q. Isn't it true that the company has been
7 losing money and that it's likely that the company
8 would have income tax loss carry forwards?

9 A. As I was sitting here earlier today, I heard
10 Staff Witness Griffin's testimony regarding that,
11 but I have not performed any analysis in this
12 proceeding that would form the basis for an opinion
13 about that with respect to this company in this
14 proceeding. I just incorporated the recommendations
15 of other staff witnesses.

16 MR. GARG: Thank you.

17 That's all the questions.

18 MR. LOWE: I have just one.

19 CROSS EXAMINATION

20 BY

21 MR. LOWE:

22 Q. Mr. Struck, just as a general proposition I

1 note with reference to this particular case, but if
2 a company has been losing money consistently and
3 suddenly earns a profit, there is a tax loss
4 carry over, generally speaking, correct, which would
5 effect its revenue requirements, vis-a-vis its
6 payment of federal and state income taxes?

7 A. Generally, I think it's correct that there
8 would be some impact of past losses on future
9 earnings when one is preparing tax returns or
10 calculating taxes payable, but with respect to
11 ratemaking and determining revenue requirements, the
12 goal is to determine a company's cost of service for
13 a test period and, generally speaking, those loss
14 carry forwards aren't included in a test year which
15 is suppose to be representative going forward for an
16 indeterminate period of time.

17 JUDGE BRODSKY: Anything further?

18 MR. LOWE: I have no other questions.

19 JUDGE BRODSKY: Any redirect?

20 MS. VON QUALEN: Staff has no redirect.

21 JUDGE BRODSKY: Thank you, Mr. Struck.

22 MS. SATTER: We are going to Dave Efron.

1 JUDGE BRODSKY: Let's see. We have three
2 witnesses left I believe --

3 MS. SATTER: Yes.

4 JUDGE BRODSKY: -- Mr. Hanson, Connor, and
5 Efron.

6 What's your proposal for the schedule.

7 MS. SATTER: Well, I thought to continue with the
8 accounting we could do Dave Efron --

9 MS. VON QUALEN: That's fine.

10 MS. SATTER: -- then we would go to Fred Hanson
11 and then to Dennis Connor.

12 MS. VON QUALEN: Staff has no cross for any of
13 those three.

14 MS. SATTER: Okay.

15 MS. MURAN-FELTON: That's fine.

16 MS. SATTER: Do you have time to call him now?

17 MS. MURAN-FELTON: Absolutely.

18 JUDGE BRODSKY: So that's fine, so it would be
19 Mr. Efron and by appearing by phone?

20 MS. SATTER: Yes.

21 JUDGE BRODSKY: Let's go off the record and get
22 the phone set up.

1 (Off the record.)

2 Let's go back on the record. Go ahead
3 and call your witness.

4 MS. SATTER: Okay. I would like to call David J.
5 Effron on behalf of the People of the State of
6 Illinois.

7 JUDGE BRODSKY: Okay.

8 MS. SATTER: Thank you.

9 (Witness sworn.)

10 DAVID J. EFFRON,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY

15 MS. SATTER:

16 Q. Would you state your name, occupation, and
17 business address.

18 A. My name is David J. Effron, E-f-f-r-o-n.
19 I am a consultant specializing in utility matters,
20 and my business address is 386 Main Street,
21 Richfield, Connecticut.

22 Q. Do you have before you a document entitled,

1 "Direct Testimony of David J. Effron on behalf of
2 the People of the State of Illinois, AG Exhibit 1?"

3 A. Yes, I do.

4 Q. And did you prepare that document?

5 A. Yes, I did.

6 Q. And did you also prepare schedules Schedule
7 DJE-1 through DJE-5?

8 A. Yes, I did.

9 Q. And do you have any changes to these
10 documents that you would like to make right now?

11 A. No, I do not.

12 Q. If I were to ask you the questions contained
13 in this document, would your answers be the same?

14 A. Yes, they would.

15 Q. Are your answers true and correct to the
16 best of your information, knowledge, and belief?

17 A. Yes, they are.

18 Q. Again, would you like to offer these
19 documents as your direct testimony in this case?

20 A. Yes.

21 Q. And, just for the record, these documents,
22 AG Exhibit 1, the direct testimony was filed on

1 January 21st, we did notice that two of the
2 schedules had some filing errors when they converted
3 to PDF and so the February 28, 2005 e-Docket version
4 is complete.

5 MR. ARMSTRONG: Are we talking about January 21,
6 2005?

7 MS. SATTER: Yes, as the schedule had some
8 modifications so there was an errata sent around
9 because some pages were cutoff at the bottom.

10 JUDGE BRODSKY: They dealt with Schedule DJE-1
11 and 2?

12 MS. SATTER: Correct. And, Mr. Efron -- I move
13 for admission of AG Exhibit 1 and the attached
14 schedules and also Mr. Efron for cross examination.

15 JUDGE BRODSKY: Is there any objection?

16 MS. MURAN-FELTON: No objection.

17 JUDGE BRODSKY: Okay. Hearing none, then those
18 items will be admitted subject to cross, and there
19 having previously been determined that there's no
20 objection to the telephonic appearance, we may
21 proceed.

22

1 (Whereupon, AG Exhibit
2 No. 1 was received in
3 evidence.)

4 Who has cross for Mr. Effron?

5 MS. MURAN-FELTON: The company has brief cross
6 for Mr. Effron.

7 JUDGE BRODSKY: Okay. Please proceed.

8 CROSS EXAMINATION

9 BY

10 MS. MURAN-FELTON:

11 Q. Mr. Effron, can you hear me?

12 A. Yes, I can.

13 Q. Great. I'm going to turn your attention to
14 your Exhibit 1, your January 21st testimony, Page 6.

15 A. Give me one moment.

16 (A brief pause.)

17 Yes, I have that.

18 Q. Okay. Great. On line -- in Line 15 what is
19 meant by services?

20 A. Services would be -- I'm trying to think how
21 to define without being secular. Services would be
22 outside assistance that was provided to the company

1 by nonemployees or worked on for the company by
2 nonemployees. I'm sorry. I might have the wrong
3 line number here. I'm not sure the lines what I
4 have are lined up with yours. Could you -- maybe
5 you -- if you could give me the sentence.

6 Q. Sure. It's under Subsection B, cost of
7 service, number one, operation and maintenance
8 expense. The question is what costs are included in
9 test year operation and maintenance expense.

10 A. Yes. Yes, services. I'm sorry. Yes,
11 services is used there would mean it would be work
12 performed by the company by nonemployees.

13 Q. Mr. Effron, looking at Schedule DJE-1 --

14 A. Yes.

15 Q. -- and that is under your sources, you have
16 got NLU-1 Exhibit ISA-1.

17 A. Yes.

18 Q. Where does that come from?

19 A. That was one of the exhibits filed by
20 Mr. Armstrong with the application.

21 Q. Can you identify what line -- under what
22 line item you are referencing of ISA-1?

1 A. If you have that in front of you --

2 Q. Yes.

3 A. -- look at the top where it has operating
4 revenue. It would be the second to the last item of
5 operating revenue, just the line above total
6 operating revenue.

7 Q. Okay. Thank you.

8 A. And, well, that was for the other revenue
9 credit line, and revenues under present rates that
10 would be a couple lines above that, the line that's
11 labeled total sales, those are the two lines that
12 DJ-1 that have NLU Exhibit ISA-1 as their source,
13 and I'm sorry. The other one would be the taxes
14 of -- income taxes and that would be the line that's
15 labeled on the left under expenses 408.1 attached as
16 income. I think all those numbers are the same.

17 MS. MURAN-FELTON: Thank you.

18 I don't think we have anything else.

19 Thank you, Mr. Effron.

20 THE WITNESS: Thank you. I appreciate your doing
21 the cross-examination by telephone.

22 MR. BRODSKY: Okay. Is there any further

1 questions for Mr. Efron? Mr. Lowe?

2 MR. LOWE: I have none, your Honor.

3 JUDGE BRODSKY: And staff.

4 MS. VON QUALEN: Staff has none.

5 JUDGE BRODSKY: Okay. Any redirect?

6 MS. SATTER: We have no redirect.

7 JUDGE BRODSKY: Thank you very much, Mr. Efron.

8 THE WITNESS: Thank you, and, again, I appreciate
9 your accommodating the cross-examination in this
10 manner.

11 MS. SATTER: Thank you, Dave.

12 THE WITNESS: Thanks.

13 MS. SATTER: Bye bye

14 THE WITNESS: Bye.

15 MS. SATTER: Thank you very much. I do
16 appreciate that accommodation.

17 JUDGE BRODSKY: So we can --

18 MS. SATTER: Call my next witness.

19 JUDGE BRODSKY: Do we need to proceed or does
20 anybody need a break at this point?

21 (No response.)

22 Let's proceed then.

1 MS. SATTER: The People of the State of Illinois
2 would like to call Brett Hanson.

3 You might want to bring a copy of your
4 testimony.

5 MR. HANSON: Sure.

6 JUDGE BRODSKY: Okay. Mr. Mr. Hanson.

7 (Witness sworn.)

8 Thank you.

9 BRETT HANSON,
10 called as a witness herein, having been first duly
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY

14 MS. SATTER:

15 Q. Can you please state your name for the
16 record.

17 A. My name is Brett Hanson.

18 Q. And what is your occupation?

19 A. I'm the regional manager for the Illinois
20 EPA Rockford regional office, water section.

21 Q. And what is your business address?

22 A. 4302 North Main Street, Rockford, Illinois.

1 Q. And did you prepare what's been marked as
2 Direct Testimony of Brett Hanson on behalf of People
3 of the State of Illinois, AG Exhibit 2?

4 A. Yes.

5 Q. And did you also attach certain schedules to
6 that testimony?

7 A. There were several attachments, yes.

8 Q. And the attachments are all authentic to
9 what they claim to be?

10 A. Yes.

11 Q. Do you have any changes you would like to
12 make to this document?

13 A. I think the only thing maybe some
14 clarifications or updates to the document.

15 Q. If I were to ask you the questions today
16 contained in this document, would you have any
17 different answers?

18 A. No.

19 Q. Were your answers true and correct at the
20 time they were given?

21 A. Yes, they are.

22 Q. And are they still true and correct?

1 CROSS EXAMINATION

2 BY

3 MS. MURAN-FELTON:

4 Q. Mr. Hanson, you testified in the enforcement
5 proceeding against New Land Utility, didn't you?

6 A. Yes.

7 Q. And during your testimony in the course of
8 that proceeding there were various exhibits entered,
9 testimony that you provided and exhibits entered on
10 behalf of the state. Do you recall what those were?

11 A. There were a plethora of attachments
12 basically in the exhibits presented.

13 Q. Specifically, with respect to your
14 testimony, there was at least one inspection report
15 and your testimony in this matter, as well as the
16 exhibits in this proceeding were also identified in
17 the enforcement proceeding; is that correct?

18 A. I don't know if they were identical.

19 Q. They're identified or --

20 A. There may be additional ones in this
21 document that weren't in the previous testimony and
22 vice versa.

1 Q. But some of the testimony from -- the
2 testimony from this proceeding that you prefiled in
3 the rate case was also utilized in the enforcement
4 proceeding?

5 A. Yes.

6 Q. And the exhibits that you attached to the
7 testimony in this rate case were also attached to
8 the testimony that was submitted in the enforcement
9 proceeding?

10 A. I don't know if a hundred percent of them
11 were. I'm sure many of them were.

12 Q. Specifically, do you recall if in the
13 enforcement proceeding a document entitled, "New
14 Landing Compliance Issues and Completion Dates,
15 dated July 12, 2001" was utilized in the enforcement
16 proceeding on your behalf?

17 A. I don't recall that offhand.

18 Q. Would perhaps if you were to take a look at
19 this document it may refresh your memory as to
20 whether or not you referred to it at all in the
21 enforcement proceeding.

22 A. Very possible.

1 MS. MURAN-FELTON: I would like to make this a
2 company exhibit, New Landing Exhibit 3, for
3 identification purposes.

4 MS. SATTER: Do you have a copy?

5 MR. ARMSTRONG: Sure.

6 MS. MURAN-FELTON: Q. Mr. Hanson, this help
7 refresh your memory as to whether or not documents
8 were utilized in the enforcement proceedings?

9 A. This looks like a copy of a document that
10 was prepared by me to our legal counsel and I'm not
11 positive as this was introduced into evidence in the
12 hearing.

13 MS. SATTER: I would like to interpose an
14 objection. If this was something prepared for
15 counsel to be attorney/client privilege here and it
16 cannot be utilized under those circumstances.

17 MS. MURAN-FELTON: This document, however,
18 actually was identified as Defendant's Exhibit No. 5
19 and it was utilized in the enforcement proceedings,
20 so it's part of the public record.

21 MS. SATTER: I don't know that, and that's -- I
22 actually have reviewed that transcript and I don't

1 recall seeing this. If this is an attorney -- if
2 this is something Mr. Hanson testified he prepared
3 for his attorney, it's not appropriate to be used in
4 this context today.

5 MS. MURAN-FELTON: It is a part of the record
6 though of the enforcement proceedings.

7 MR. ARMSTRONG: It's an exhibit.

8 MS. SATTER: It's not marked as an exhibit.

9 MS. MURAN-FELTON: Down at the bottom, it does
10 say 5. If there's any leeway with questioning, we
11 could provide a certified copy from the court in the
12 enforcement proceeding in Ogle County and we could
13 question Mr. Hanson on this exhibit subject to
14 strike if that certified copy's not provided.

15 JUDGE BRODSKY: Okay. I was wondering what your
16 source of it was in this case, but if it's from
17 the record --

18 MR. ARMSTRONG: I can answer questions about
19 that. I was not the witness at the time.

20 JUDGE BRODSKY: I'm asking Ms. Felton what the
21 source of it to be or where you acquired it from.

22 MS. MURAN-FELTON: This particular document was

1 produced by the EPA during discovery and the company
2 produced it and it was entered into evidence in the
3 enforcement proceeding without objection.

4 JUDGE BRODSKY: Okay.

5 MS. MURAN-FELTON: If that helps refresh anyone's
6 memory here.

7 THE WITNESS: I do recall it being in discovery.

8 MS. SATTER: I consulted with Mr. Hanson and he
9 said he will be willing to waive any attorney/client
10 privilege, if there is one, so we can continue.

11 JUDGE BRODSKY: All right. If that's the case,
12 then we don't even need to separate the sub --
13 subdivide the proceeding in any way, so we'll just
14 maintain it going forward. Whatever counsel wants
15 to do, she can move forward.

16 MS. MURAN-FELTON: If there's -- seeing there's
17 hopefully no objection, we would move -- the company
18 would move just to enter this exhibit into evidence
19 as New Landing Exhibit No. 3.

20 MS. SATTER: What's the relevance of it? I would
21 object on the grounds there's been no showing that
22 this is relevant to the issues at hand in this case.

1 This is July 12, 2001. Here we are April 5th, 2005.

2 They haven't tied this into Mr. Hanson's testimony.

3 JUDGE BRODSKY: So why don't you lay some
4 foundation for it.

5 MS. MURAN-FELTON: In Mr. Hanson's testimony
6 provided in this proceeding he indicates that the
7 company should replace its old lines, however, in
8 this record here on Page 5 he provides information
9 suggesting that the old lines do not need to be
10 replaced.

11 JUDGE BRODSKY: Okay. So why don't you lay some
12 foundation by asking him a question.

13 MS. MURAN-FELTON: Q. Mr. Hanson, did you
14 indicate that you prepared this document?

15 A. Yes.

16 Q. Okay. And everything in this document you
17 believe to be truthful at the time that you drafted
18 it?

19 A. Yes.

20 Q. And today do you still believe that it's
21 truthful?

22 A. I think it's pretty much on target, yes.

1 Q. And specifically on Page 5 you indicate that
2 in paragraph -- the first full paragraph you
3 indicate that "The agency has not included
4 requirement replacement of existing undersized water
5 mains in the development in this complaint, and
6 exception entitled from replacing existing water
7 mains exists in the agency regulations 351AC Section
8 653.203 as long as the minimum pressure of 20 psi
9 can be maintained. Sections of water main must be
10 replaced with materials that meet current minimum
11 requirements.

12 If pressure in the subject water mains
13 cannot be maintained above 20 psi or if sections
14 fail and require replacement, minor repairs to
15 existing undersized water mains are permitted to be
16 made without replacement of all undersized water
17 mains that exist in the system. This exception
18 applies to all community water systems in Illinois."

19 A. That's correct. There is one omission in
20 this in that the utility or water supply has to show
21 that they obtained all required permits through the
22 Department of Public Health or other reviewing

1 authority before the existence of EPA and that was
2 not included in here. If you want to go back and
3 read Section 653.203, it explains all the criteria
4 for the exceptions.

5 Q. I just asked -- just didn't get a question
6 on the record. I just want to refresh your memory
7 whether you drafted it.

8 A. This I'm pretty much positive we use for
9 statewide, correct.

10 MS. MURAN-FELTON: In light of the fact that,
11 Mr. Hanson testified to the fact this is the
12 document he prepared and that it's truthful, I move
13 to enter into evidence as Company Exhibit No. 3.

14 MS. SATTER: We don't have an objection.

15 MR. LOWE: I would like to see it.

16 MS. MURAN-FELTON: I'm sorry.

17 JUDGE BRODSKY: Show it to counsel.

18 MS. VON QUALEN: As do staff.

19 MR. LOWE: May I have a moment to read it?

20 JUDGE BRODSKY: Yes. Let's take a couple of
21 minutes.

22 (A brief pause.)

1 MR. LOWE: I would object to the admission of
2 this document into evidence. It's irrelevant to
3 this proceeding.

4 JUDGE BRODSKY: Let's go on the record.

5 MR. LOWE: I would object on behalf of the Lost
6 Nation Property Owners Association to the admission
7 of this document into evidence, because with
8 reference to the portion quoted from Page 5, counsel
9 for the utility, that section of the document's
10 totally irrelevant as far as this proceeding is
11 concerned, its only determination of whether or not
12 the EPA at that particular moment under those
13 particular circumstances thought those undersized
14 lines might not have to be replaced, but that's not
15 the purpose of the proceeding before the Commission.
16 We are not deciding that issue, therefore, I don't
17 see -- it's totally irrelevant.

18 MS. MURAN-FELTON: It leads to the question of
19 Mr. Hanson's testimony regarding whether or not the
20 old lines need to be replaced and, therefore, it is
21 relevant and, your Honor, accepted other evidence
22 that is arguably irrelevant and specifically all the

1 evidence related to the receivership and, in light
2 of that, we feel this is highly relevant to the
3 obligations of the company, if any, with respect to
4 the old lines.

5 MS. SATTER: Are you suggesting Mr. Hanson has
6 made a recommendation in this case that something --
7 will something be done with the old lines?

8 MS. MURAN-FELTON: Yes.

9 MS. SATTER: May be it would be --

10 MS. MURAN-FELTON: Through testimony --

11 MS. SATTER: Maybe it would be helpful to say
12 where.

13 MS. MURAN-FELTON: Throughout his whole direct
14 testimony.

15 MS. SATTER: His whole direct testimony?

16 THE WITNESS: Could I explain?

17 JUDGE BRODSKY: Wait. No.

18 Can you be a little bit more specific as
19 to the citation, Ms. Felton?

20 MS. MURAN-FELTON: Specifically, in his
21 attachments to his testimony evaluation reports, it
22 specifically -- I'm looking at a letter by him to

1 Mr. Armstrong on December 2nd 1993 in the summary of
2 deficiencies he references under distribution.

3 JUDGE BRODSKY: Where are you looking?

4 MS. MURAN-FELTON: This is all -- well, this is
5 Schedule -- December 2nd 1993. It is identified up
6 on the top as AJ Exhibit 2 and down at the bottom
7 Plaintiff's Exhibit 12 and he references Attachment
8 A that is attached to that letter.

9 JUDGE BRODSKY: Oh, okay. And then -- -

10 MS. MURAN-FELTON: And for specifically, as I
11 mentioned under distribution Paragraph 4 under
12 Attachment A, distribution Paragraph D.

13 MR. LOWE: Your Honor, please the Court,
14 specifically at Pages 13 and 14 of his testimony
15 address the issue of undersized main and says it
16 would be a good idea to replace them, but there's
17 nothing in that testimony which says that the EPA's
18 position is that they have to be replaced.

19 MR. ARMSTRONG: Exhibit --

20 MS. MURAN-FELTON: If you look at the exhibit,
21 that's where they say deficiencies, so it has raised
22 a question of fact.

1 JUDGE BRODSKY: All right. Well, for the limited
2 purposes of addressing the contents on Pages 13 and
3 14 of the direct testimony and certain preferred
4 spots in the attachments, I'm going to overrule the
5 objection. I'm going to ignore the part about
6 admitting alleged irrelevant material, and with
7 that, was there any objection from staff?

8 MS. VON QUALEN: Staff is not objecting.

9 JUDGE BRODSKY: Okay. So then the Company
10 Exhibit 3 will be admitted for the limited purposes
11 discussed.

12 (Whereupon, NLU
13 Exhibit No. 3 was
14 received in evidence.)

15 MS. MURAN-FELTON: Thank you.

16 MS. MURAN-FELTON: Q. Mr. Hanson, I'm going to
17 refer you to Page 5 of your testimony filed on
18 January 21, 2005, specifically, you identify at the
19 very top of Page 5 in Lines 1, 2, and 3, items that
20 need to be done, such as properly sealing abandoned
21 inactive wells and need to install adequately-sized
22 flushing hydrants on deadend water mains or install

1 new water mains to loop distribution system; is that
2 correct?

3 A. Yes.

4 Q. And that's been done by the company; is that
5 correct?

6 A. I think 99 percent done. There's some final
7 work that has not been completed yet. The actual
8 hydrants are installed, but the surface restorations
9 have not been done. There's still pits out there
10 basically where they excavated to install the
11 hydrants. The surface restoration's not completed
12 yet.

13 Q. It's 99.9 percent done?

14 A. I'm not sure how much percentage of those
15 projects are going to be, but there's ground
16 restoration work to be done as safety and mechanical
17 integrity process to state-wide hydrants.

18 Q. Is there -- are you saying that the
19 remaining work is going to be done in the spring?

20 A. I don't know. It's suppose to have been
21 done already.

22 Q. In lines 5 through 14 you indicate three

1 other areas in which the company needs to act. Now
2 these items were in no way, were they, requested at
3 all in the enforcement matter, were they?

4 A. Which items?

5 Q. That's actually -- I will point you to
6 Paragraph H, Paragraph I, and Paragraph J on that
7 page.

8 A. Those were not required in this -- in the
9 AG's case, no.

10 Q. And under -- at the very bottom of the page
11 you set out a time. There's a time frame set out
12 starting with January 10, 2005.

13 A. Which page?

14 Q. The same page towards the bottom there's a
15 time frame timetable that begins with January 10,
16 2005, temporary emergency water main --

17 A. It's my next page. Okay.

18 Q. -- cites a time line.

19 A. Uh-huh.

20 Q. The first two items have been done, haven't
21 they?

22 A. The temporary emergency water main I don't

1 think that's been done.

2 Q. And what about the flushing hydrant water?

3 A. Flushing hydrants have been installed. I
4 believe there's a water leak. There may be two of
5 them have been repaired since then.

6 Q. And then the remainder of these, starting
7 with April 19, 2000 all the way down the bottom to
8 December -- excuse me -- August 28, these were all
9 referenced in the enforcement matter?

10 A. Yes. I believe they all are, yes.

11 Q. Mr. Hanson, on the bottom of Page 11 of your
12 testimony under Item L for main over spellway
13 (sic) --

14 A. Uh-huh. Yes.

15 Q. -- with respect to a January 10, 2005 letter
16 indicates that New Landing was informed that it
17 could not have a permit for that temporary emergency
18 main because it was not constructed according to
19 acceptable public water supply water main standards.

20 A. Correct.

21 Q. Mr. Armstrong asked you if it could be
22 retained for future emergency use, is that correct,

1 and you said no?

2 A. That's correct.

3 MS. MURAN-FELTON: I don't think we have any
4 further questions. Thank you, Mr. Hanson.

5 THE WITNESS: Okay.

6 JUDGE BRODSKY: Is there any further cross?

7 MR. LOWE: I have a couple of questions, your
8 Honor.

9 JUDGE BRODSKY: Okay. Please proceed.

10 CROSS EXAMINATION

11 BY

12 MR. LOWE:

13 Q. Mr. Hanson, calling your attention to AG
14 Exhibit 2, attached Schedule 2, there's a letter
15 under date of December 2nd 1993 to New Landing
16 Utility, do you have?

17 A. I don't believe I have the attachments with
18 me.

19 MS. SATTER: Schedule 2, did you say?

20 MR. LOWE: Yes, December 2, 1993 letter.

21 THE WITNESS: I have a copy.

22 MR. LOWE: Q. Specific question that I have

1 concern that letter. It shows that copies of that
2 letter were sent to various entities, including the
3 Illinois Commerce Commission.

4 A. That's correct.

5 Q. Now in your testimony at Page 5 there is a
6 time line of various letters sent by you and/or
7 someone else at the EPA to New Landing Utility. Do
8 you think they're in total approximately 23?

9 A. That's correct.

10 Q. Were copies of all of those also sent to the
11 Illinois Commerce Commission?

12 A. I don't believe the notice of intent to
13 pursue legal section was copied to the Commerce
14 Commission. Without looking at those documents and
15 who they were cc'd to, I don't recall offhand. The
16 evaluation letters I think dated December 5th '97 on
17 down those should have been all copied to the
18 Commerce Commission; likewise, the July 13 and June
19 2004, the June 24, 2003 evaluation letter should
20 have been cc'd to the Commerce Commission.

21 Q. To your knowledge, do the staff of the
22 Illinois Commerce Commission ever respond to any of

1 these letters?

2 A. Not to my knowledge.

3 Q. Thank you.

4 MR. LOWE: I have no other questions.

5 JUDGE BRODSKY: Anything from staff?

6 MS. MURAN-FELTON: Staff has no cross.

7 JUDGE BRODSKY: Okay. Any redirect.

8 MS. SATTER: Just a little bit.

9 REDIRECT EXAMINATION

10 BY

11 MS. SATTER:

12 Q. Mr. Hanson, on I believe it's Page 4,
13 possibly Page 5 of your copy, you itemize various
14 things, starting at Page 2, Paragraph DEF, the next
15 paragraph says Page 2, Paragraph B, the company
16 asked you some questions about items contained in
17 that section.

18 Were these -- were you responding to
19 anything --

20 A. No, this is --

21 Q. -- in this section?

22 A. No. This is just a list of correspondence,

1 a list of significant activities.

2 Q. Okay. Go up a little previously, that would
3 be on your Page 5, the question starts at the bottom
4 of Page 4, were you responding to anything in your
5 answer?

6 MR. ARMSTRONG: Counsel, are you referring to --

7 MS. MURAN-FELTON: Have you ever addressed any of
8 items mentioned in those letters with Mr. Armstrong
9 and NLU? Is that the question?

10 MS. SATTER: Yes.

11 THE WITNESS: Yes, these items were all addressed
12 to New Landing Utility at some point in time.

13 MS. SATTER: I have no further questions. Thank
14 you.

15 JUDGE BRODSKY: Recross.

16 MS. MURAN-FELTON: No, nothing. Thank you.

17 MR. LOWE: Nothing your Honor.

18 JUDGE BRODSKY: All right. Thank you,
19 Mr. Hanson.

20 THE WITNESS: Sure.

21 JUDGE BRODSKY: At this point we have Mr. Connor,
22 correct, who's going to be by phone?

1 MS. SATTER: Right.

2 JUDGE BRODSKY: Let's -- before we do that, let's
3 take a 10-minute break.

4 (Whereupon, a 10-minute
5 break was taken.)

6 (Witness sworn.)

7 Thank you. And we have previously a
8 stipulation that there's been no objection to the
9 telephone appearance of Mr. O'Connor; is that
10 correct?

11 MS. MURAN-FELTON: That's correct.

12 MS. SCARSELLA: Yes.

13 DENNIS CONNOR,
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY

18 MS. SATTER:

19 Q. Mr. Connor, could you please state your name
20 and occupation.

21 A. Dennis Connor. I'm an environmental
22 protection specialist with the Illinois EPA Rockford

1 regional office.

2 JUDGE BRODSKY: Could you turn up the volume on
3 the phone.

4 MS. SATTER: Q. Did you prepare direct
5 testimony, being the direct testimony of Dennis
6 Connor on behalf of People of the State of Illinois
7 marked AG Exhibit 3 in this case?

8 A. I did.

9 Q. And if I were to ask you the questions
10 contained in that document, would your answers be
11 the same?

12 A. They would all be the same, except for those
13 references to the exhaust fan in the building.
14 Sometime prior to our visit on February 27th, that
15 exhaust system was replaced and was operable on
16 February 27 of this year.

17 Q. Was that on pages -- on Page 14 of your
18 testimony and answer to the question do you have any
19 other concerns about the water treatment plant at
20 New Landing Utility?

21 A. That's correct.

22 Q. And other than that, would your answers be

1 the same?

2 A. Yes, they would.

3 Q. And are the schedules attached to your
4 testimony authentic and that they are what they
5 claim to be?

6 A. Yes, they are.

7 Q. And would you like to offer this testimony
8 as your -- these documents as your testimony today?

9 A. I would.

10 Q. And are they true and correct to the best of
11 your information and belief?

12 A. Yes, they are.

13 MS. SATTER: I would like to move for admission
14 of AG Exhibit 3 and attachments and offer Mr. Connor
15 for cross-examination.

16 JUDGE BRODSKY: Is there any objection?

17 MS. MURAN-FELTON: No objection.

18 MR. LOWE: No objection.

19 MS. SCARSELLA: None from staff.

20 JUDGE BRODSKY: Then those items are admitted
21 subject to cross.

22

1 (Whereupon, AG Exhibit
2 No. 3 was received in
3 evidence.)

4 Do you have want to proceed?

5 MS. MURAN-FELTON: Yes.

6 CROSS EXAMINATION

7 BY

8 MS. MURAN-FELTON:

9 Q. Mr. Connor, this is Amy Muran-Felton. I
10 have got a few questions for you.

11 A. Go ahead.

12 Q. Great. First off, the day-to-day operations
13 of the sewage plant are the responsibility of the
14 certified operator; is that correct?

15 A. To the extent that the contract delineates.

16 Q. And do you have any reason to believe with
17 respect to New Landing Utility that the day-to-day
18 operations of the certified operator are anything
19 other than those responsibilities which are the
20 day-to-day operations and conduct with respect to
21 the sewage plant?

22 A. That's correct.

1 Q. And in order to become a certified
2 professional operator, you have to pass some tests
3 conducted by the IEPA, don't you?

4 A. Yes.

5 Q. And isn't it true when violations are
6 reported that the certified operator can either,
7 one, undertake corrective action and/or, two,
8 reflect in his or her discharge monitoring report to
9 show that the violation has been corrected; is that
10 correct?

11 A. That's correct.

12 Q. And would you agree that it's not uncommon
13 for a small system like New Landing Utility to
14 occasionally show deficiencies in their discharge
15 monitoring reports?

16 A. No, I would not agree.

17 Q. Would you agree that the sewage plant was
18 constructed at New Landing in accordance with the
19 designs approved by the IEPA?

20 A. I didn't perform an inspection at the time
21 of construction so I can't really comment on that.

22 Q. Would you have any reason to disagree with

1 that statement?

2 A. I believe there were some items in the
3 construction permits that were never installed and
4 that's my only reservation I guess.

5 Q. Okay. Mr. Connor, would you agree that
6 because of the number of homes that are, in fact,
7 connected is relatively small with respect to New
8 Landing that this sewage plant can't operate in the
9 manner that it was designed to operate?

10 A. I would not agree with that.

11 Q. And would you agree that instead of
12 operating on a continuous basis this sewage plant
13 operates on a batch basis?

14 A. That's my understanding at the present time.

15 Q. And is it your understanding that on a batch
16 basis plant, such as this sewage plant, its
17 operations are on an on again/off again basis?

18 A. Well, that's the definition of a batch
19 operation.

20 Q. And because this sewage plant operates on a
21 batch basis --

22 A. Let me rephrase that. A batch system could

1 be operating continually but only discharge
2 periodically. That could be considered a batch
3 operation.

4 Q. And because New Landing's sewage plant
5 operates on a batch basis, it faces certain
6 operational problems that it might not otherwise
7 face if it operated on an operational basis; is that
8 correct?

9 A. Given adequate controls, a batch operation
10 should be able to comply with all the regulations.

11 Q. Mr. Connor, I'm going to refer you to your
12 direct testimony beginning on Page 9. You might
13 refer to the question begins with has the IEPA
14 brought these violations to the attention of NLU
15 management. It's the top of my Page 9.

16 A. Okay.

17 Q. And then underneath there's an answer by you
18 with a series of dates and references to letters.

19 A. Okay. I found it.

20 Q. Okay. The first item underneath your answer
21 is a letter dated 8-16-1985, a letter sent to LNU
22 for failure to submit discharge monitoring report.

1 A. Correct.

2 Q. And that's a certified operator tasks, isn't

3 that, as far as responsibility?

4 A. If they, in fact, have a certified operator.

5 Q. And in this case there was a certified

6 operator and corrective action was taken?

7 A. That -- I don't know the outcome of that

8 letter.

9 Q. You don't know if any corrective action was

10 taken on behalf of the company?

11 A. No, I don't.

12 Q. Okay. The letter below that February 11,

13 1988, the letter sent to New Landing for sewage

14 bypassing and lack of certified operator, the

15 company has hired -- since hired a certified

16 operator; is that correct?

17 A. I can't tell from that statement.

18 Q. In the letter beneath that April 13, 1988,

19 letter sent to NLU for failure to monitor for

20 ammonia nitrogen concentration discharge and lack of

21 certified operator --

22 A. Okay.

1 Q. -- corrective action was taken with respect
2 to this matter; is that correct?

3 A. Again, I don't know.

4 Q. All right. Turning your attention just two
5 down to the March 14, 1989 letter for bypass
6 violations for grinder pump failure --

7 A. I see it.

8 Q. -- grinder pumps are the responsibility of
9 the customer; isn't that correct?

10 A. I don't know the disposition of the
11 responsibilities as far as the grinder pumps.

12 Q. In this case, the grinder pumps, Mr. Connor,
13 are on the customer's property; is that correct?

14 A. That's my understanding.

15 Q. Just beneath that, the October 16, 1996
16 violation notice letter to NLU --

17 A. Yes.

18 Q. -- and then the December 12, 1996 letter --

19 A. Yes.

20 Q. -- the December 23, 1996 letter --

21 A. Yes.

22 Q. -- and the December 31, 1996 letter.

1 A. Uh-huh.

2 Q. Those are -- with respect to those four
3 letters, corrective action has been taken and this
4 problem has been solved; isn't that correct?

5 A. Well, the letter -- the last letter that you
6 referenced says that agency accepted the revised
7 compliance commitment. That means that New Landing
8 made a commitment to comply but it does not verify
9 whether they did or, in fact, comply.

10 Q. Do you know if the company did or did not
11 comply?

12 A. No, I don't.

13 Q. Thank you.

14 And then looking down to the July 25,
15 1997, IEPA staff telephoned Mr. Armstrong demanded
16 immediate repairs with respect to the main.

17 A. Yes, I see that.

18 Q. The main has since been repaired; isn't that
19 correct?

20 A. I beg your pardon?

21 Q. The main -- the sanitary sewer for the
22 main --

1 A. Yes.

2 Q. -- has since been repaired; is that correct?

3 A. That's my understanding.

4 Q. And then scrolling down to the May 18, 1999

5 violation notice letter sent to NLU for failure to

6 complete discharge monitoring report --

7 A. Yes.

8 Q. -- and failure to obtain certified

9 operator --

10 A. Yes.

11 Q. -- the company has since obtained and --

12 excuse me -- hired a certified operator; is that

13 correct?

14 A. Again, I don't know the exact date when they

15 hired the operator.

16 Q. Okay. Moving onto the July 15, 1999 letter

17 to NLU rejecting compliance commitment --

18 A. Yes, I see it.

19 Q. -- the certified operator has since taken

20 corrective action with respect to this matter,

21 hasn't he?

22 A. Again, I can't tell from that document.

1 Q. Okay. Looking to the June 29, 2000 letter
2 to NLU to give notice that contractual agreement for
3 the operation of the NLU waste water treatment
4 facility had expired?

5 A. Yes.

6 Q. That's not so, is it, Mr. Connor, since the
7 company showed the EPA the agreement that in this
8 agreement it renewed automatically; is that correct?

9 A. I don't have that documentation in front of
10 me, but that could be the case.

11 Q. And could that be the case also with the
12 October 29, 2001 letter with respect to the
13 contractual agreement expiring the company showed --
14 demonstrated that this agreement also renewed
15 automatically; is that possible?

16 A. That's possible.

17 Q. Do you recall if it is?

18 A. No, I don't.

19 Q. And then, finally, the January 30, 2003
20 violation notice letter to NLU for failure to
21 install and maintain systems to avert violations as
22 well as for discharge exceeding permit limits for

1 suspended solids --

2 A. Yes.

3 Q. -- New Landing has since taken corrective
4 action with respect to that matter; hasn't it?

5 A. No, it has not.

6 Q. Which part has the company failed to take
7 corrective action on?

8 A. There has been no change in the equipment
9 other than the exhaust fan for buildings as far as I
10 know.

11 Q. Okay. Mr. Connor, do you personally know
12 Michael Bollinger (phonetic), the certified
13 operator?

14 A. I do.

15 Q. And do you know Greg Stechschulte?

16 A. Yes, I do.

17 Q. Do you consider both Mr. Bollinger and
18 Mr. Stechschulte qualified as certified operators --

19 A. I do.

20 Q. -- in the field?

21 A. I do.

22 Q. Thank you.

1 MS. MURAN-FELTON: I think that's it. Thank you,
2 Mr. Connor.

3 THE WITNESS: You are welcome.

4 JUDGE BRODSKY: Anything?

5 MR. LOWE: I have no questions.

6 MS. SCARSELLA: Staff has no questions.

7 JUDGE BRODSKY: Any redirect?

8 MS. SATTER: I think I have one question on
9 redirect.

10 REDIRECT EXAMINATION

11 BY

12 MS. SATTER:

13 Q. Mr. Connor, do you know whether either of
14 the certified operators for New Landing Utility have
15 the authority to correct the violations that are
16 referenced -- that were referenced in the January
17 30, 2003 violation notice?

18 A. I'm not aware that they do.

19 Q. Okay. Thank you.

20

21

22

1 RECROSS EXAMINATION

2 BY

3 MS. MURAN-FELTON:

4 Q. In follow-up, if I might, to Ms. Satter's
5 question, Mr. Connor, you are not aware that the
6 certified operators don't have the authority to do
7 that?

8 A. In order to eliminate the violations at the
9 waste water treatment facility, all the equipment
10 has to be in operating order. As far as I know,
11 it's never been the operator's responsibility to
12 fund the replacement of equipment or repair
13 equipment. That is the responsibility of the
14 utility owner. Without adequate funding, there's no
15 way that the operator can operate the facility in
16 compliance with our regulations.

17 MS. MURAN-FELTON: All right. Thank you.

18 JUDGE BRODSKY: You are welcome.

19 Anything further?

20 MS. MURAN-FELTON: No thank you.

21 JUDGE BRODSKY: Okay. Thank you, Mr. Connor.

22 THE WITNESS: Thank you.

1 MS. SATTER: Thank you very much.

2 THE WITNESS: Goodbye.

3 MS. SATTER: And thank you for accommodating
4 Mr. Connor.

5 JUDGE BRODSKY: Okay. Are there other matters?

6 MR. LOWE: There is one other matter, a
7 stipulation between the Lost Nation Property Owners
8 Association and New Landing Utility, and may I read
9 it into the record, please?

10 JUDGE BRODSKY: Okay.

11 MR. LOWE: "Stipulated and agreed by and between
12 Lost Nation Property Owner's Association and New
13 Landing Utility that if those persons whose
14 testimony in Ogle County Case No. 00CH97 and as
15 included in Exhibit SJR3 in this proceeding to the
16 testimony of Scott Ruben were called as witnesses in
17 this cause, if asked the same questions, their
18 answers would be the same as those contained in said
19 exhibit.

20 It's further stipulated that if asked
21 each would confirm that he or she receives New
22 Landing Utility water through the old lines in the

1 Lost Nation area." That concludes the stipulation.

2 JUDGE BRODSKY: Okay. Does anyone want to join
3 the stipulation?

4 (No response.)

5 Okay. Hearing none, I assume then that
6 AG and staff are expressing no opinion on the
7 stipulation and the stipulation between the Lost
8 Nation Property Owner's Association and the company
9 is noted.

10 Okay. Aside from setting a briefing
11 schedule, is there anything further for this
12 proceeding?

13 MS. VON QUALEN: Yes, Judge. I neglected to ask,
14 after Mr. Griffin testified, and he made a couple of
15 changes to Exhibit 2.OR, Schedule 2.03S and 2.03W
16 Revised, if you recall, he changed a reference from
17 CWIP to CIAC, and my question is would you like for
18 staff to file an electronically corrected schedule
19 and I would suggest only the 2.03 schedules with
20 only that one change? It's -- I mean, staff is
21 entirely neutral as to whether or not we need to
22 make that filing. I'm simply asking if you would

1 like us to make it.

2 JUDGE BRODSKY: You had the one other one, too, I
3 think, right?

4 MS. VON QUALEN: Yes. We'll be filing 11.0
5 Revised corrected. It was a typographical error.

6 JUDGE BRODSKY: If you just want to do those
7 couple of changes as an errata, that should suffice.
8 It's already in the record at this point.

9 MS. VON QUALEN: Okay.

10 JUDGE BRODSKY: So I don't think we need to make
11 it lengthier than necessary, so let's see, then we
12 were -- so then it would be 2.0-R, 7.0, and really
13 11.0 that are getting admitted. The erratas we'll
14 deal with that change to 11.0 typographical error,
15 the change from 2.0-R schedule stating CWIP and
16 CIAC; is that correct?

17 MS. VON QUALEN: Yes.

18 JUDGE BRODSKY: That's fine. Okay. Any other
19 matters?

20 (No response.)

21 Okay. With the continuance of the trial
22 from mid-March to this week, we may have to trim the

1 briefing period a little bit, but, in any case,
2 maybe the initial briefs the last week in the month
3 hopefully would be possible.

4 Ideally, I would like to see something
5 maybe the 25th of April. Is that doable? It is
6 tight I understand but the rest of the proceeding --

7 MS. MURAN-FELTON: It's tight.

8 JUDGE BRODSKY: -- the rest of the proceeding is
9 equally tight.

10 MR. ARMSTRONG: What day of the week?

11 JUDGE BRODSKY: That's a Monday.

12 MS. VON QUALEN: I suggest it would be the 27th
13 instead of the 25.

14 JUDGE BRODSKY: So look at the 27th, and then
15 what, 4th or the 9th?

16 MS. SATTER: Maybe Monday the 9th reply. I think
17 there will be substantial replies actually.

18 MR. ARMSTRONG: Looking at a tight for reply.

19 JUDGE BRODSKY: If we take -- okay. So you are
20 saying the 27th for initial briefs.

21 MS. VON QUALEN: That was --

22 JUDGE BRODSKY: What was your suggestion? Let's

1 go with actually the 26th and let's go with the 5th
2 of May.

3 MR. ARMSTRONG: What day of the week?

4 JUDGE BRODSKY: The 26th is Tuesday, the 26th of
5 April, the 5th of May is Thursday. I'm trying to
6 keep this out in front of other matters that's
7 pending. I want to get you the proposed order as
8 soon as possible because, obviously, then you'll
9 have time to look at that to brief that and then
10 we'll have Commission action in July, so,
11 unfortunately, the time frame will be tight for
12 everybody. I will work as hard as I can to get the
13 proposed order out fast as I can when the briefs
14 come in.

15 MR. ARMSTRONG: For the parties'
16 responsibilities, it's 4-26 for initial briefs and
17 5-5 for responsive or reply briefs?

18 JUDGE BRODSKY: That's correct, and I would ask
19 that each of those be filed by 12 noon on those
20 days.

21 MS. VON QUALEN: And, Judge, just to clarify the
22 schedule that we had set yesterday, if you recall we

1 had some discussion about the motion regarding the
2 receiver and also staff's request for relief of the
3 order from the Commission to desist providing
4 payments.

5 Now that briefing schedule, if I have it
6 down right, is April 15th for response from the
7 company and April 22nd for reply, and I understood
8 that to be only for the request for the orders for
9 the company to desist making payments to affiliates
10 for that briefing. Was that your understanding what
11 was said?

12 JUDGE BRODSKY: No, I think -- okay. So there
13 were two parts. There was the primary motion was
14 the motion for receivership from AG and from staff.

15 MS. VON QUALEN: Yes.

16 JUDGE BRODSKY: And the company's indicated a
17 desire to respond to that and we set April 15th as
18 the deadline for that and then the 22nd as a date
19 for any reply briefs from staff and intervenors.

20 Now within staff's motion was the
21 supplemental, or not supplemental, the second part
22 which was the motion for the order to cease and

1 desist payments. I suppose the same schedule in
2 terms of briefing would cover that as well it being
3 part of the motions. What I ask though was that you
4 file a --

5 MS. VON QUALEN: Draft.

6 JUDGE BRODSKY: -- proposed or, right, a draft
7 order which the Commission could consider if it
8 chooses to take that matter up.

9 MS. VON QUALEN: Okay. Thank you for clarifying
10 that.

11 JUDGE BRODSKY: So I suppose actually, if you
12 would -- today is the 5th -- if you have could have
13 the proposed Commission order or the proposed
14 interim order filed by noon on the 11th, that will
15 give the company a couple of days, if they choose to
16 respond to something particular in its language, so
17 that was -- what did I say -- noon on the 11th?
18 That was the -- split the time in half for that.

19 Now are you anticipating just a
20 straightforward order or are you anticipating a lot
21 of extra background going with --

22 MS. VON QUALEN: Frankly, I really haven't given

1 it any thought.

2 JUDGE BRODSKY: Well, I'll tell you what. Do the
3 best you can to construct it by Monday morning, and
4 because of the tightness of the time frame that
5 we're stuck with at this point, hopefully that gives
6 everybody sufficient time to consider it, at least a
7 little bit, and if there's an argument to bring the
8 argument and I'll take a look at it as the materials
9 come in.

10 MS. MURAN-FELTON: Thank you.

11 JUDGE BRODSKY: Is there anything further for
12 today?

13 (No response.)

14 Okay. Did you have anything?

15 MS. SATTER: No.

16 JUDGE BRODSKY: Hearing nothing, then we'll mark
17 this record heard and taken. Thank you all.

18 HEARD AND TAKEN.

19

20

21

22